

Houston, TX

CTCNet Reply to Opposition

Exhibit 3-E

Nextel Sprint Lease Summary Detail: Case Studies

<u>SPRINT MAJOR MARKET AREAS</u>	<u>Channels</u>	<u>Call Sign</u>	<u>Licensee Name</u>	<u>Sprint Licensed?</u>	<u>Sprint Leased?</u>	<u>Lease Expiration</u>	<u>Exclusive Negs.?</u>	<u>ROFR?</u>	<u>ROFR Length</u>
Houston, TX	BTA RANK: 7	BTA Number: 196							
Houston, TX	MDS1	WOF76	Sprint Communications Company, L.P.	Yes	No				
Houston, TX	MDS2	WHT570	Private Networks, Inc.	No	Yes	7/31/2022	No	No	N/A
Houston, TX	A1,A2,A3,A4	WHR492	Region IV Education Service Center	No	Yes	Uncertain	No	Yes	5 Yrs.
Houston, TX	B1,B2,B3,B4	WAU31	University of Texas Health Science Ctr. at Houston	No	Yes	6/1/2022	No	Yes	Time period is redacted
Houston, TX	C1,C2,C3,C4	WHQ281	Region IV Education Service Center	No	Yes	2/17/2008	No	No	N/A
Houston, TX	D1,D2,D3,D4	KRZ68	Spring Branch Independent School District	No	Yes	Uncertain	Uncertain	Uncertain	Uncertain
Houston, TX	E1,E2,E3,E4	WLK305	Block & Associates	No	Yes	Uncertain	No	No	N/A
Houston, TX	F1,F2,F3,F4	WMI812	Robert S. Moore	No	Yes	9/26/2007	No	Yes	Uncertain
Houston, TX	G1,G2,G3,G4	WNC208	HITN	No	Yes	5/14/2014	Yes	Yes	5 Yrs.
Houston, TX	H1	WHJ946	Sprint Communications Company, L.P.	Yes	No				
Houston, TX	H2	WHJ887	Sprint Communications Company, L.P.	Yes	No				
Houston, TX	H3	WNEY577	Sprint Communications Company, L.P.	Yes	No				

Houston, TX

MDS 1

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WOF76

*Licensed to Sprint
Subsidiary –
Alda Gold, Inc.*

Houston, TX

MDS 2

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WHT570

WHT 570

Initials: Lessor - BJ

Lessee - TR

MDS LEASE AGREEMENT

THIS MDS LEASE AGREEMENT (Agreement) is entered into this 31ST day of JULY, 1997 (the "Effective Date"), by and among **PEOPLE'S CHOICE TV CORP.**, a Delaware corporation having its principal office at 2 Corporate Drive, Shelton, Connecticut 06484 ("Lessee") and **PRIVATE NETWORKS, INC.**, having a principal office at 276 Fifth Avenue, Suite 301, New York, NY 10001 (collectively, "Lessor"). Lessor and Lessee are also referred to herein each as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the Federal Communications Commission ("FCC") has awarded Lessor a license (the "License") to construct and operate a transmission facility (the "Station") operating on Multipoint Distribution Service ("MDS") 2 Channel in Houston, Texas and assigned it Call Sign WHT 570 (the "Channel"); and

WHEREAS, Lessee is in the business of providing voice, video, data and other communications services via microwave transmission known as "wireless cable" and other means; and


WHEREAS, Lessee desires to lease from Lessor all of the transmission capacity of the Channel pursuant to the terms and conditions set forth herein;


NOW, THEREFORE, in consideration of the premises and the mutual covenants, agreements, undertakings, representations and warranties set forth herein, and subject to the terms and conditions hereof, the Parties hereby agree as follows:

Article I TERM

1.1. Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until the fifth (5th) anniversary thereof, unless earlier terminated pursuant to Article VIII, hereof (the "Initial Term").

1.2. Automatic Renewal Terms. This Agreement shall be automatically renewed for up to four (4) successive five (5) year terms, each a "Renewal Term", unless Lessee notifies Lessor in writing of its intent not to renew the Agreement not less than six (6) months prior to the end of the Initial Term or the then current Renewal Term. Collectively, the Initial Term and the Renewal Terms are referred to herein as the "Term."

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Article II USE OF CHANNEL


2.1. Lease. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, for the Term, all of the currently and potentially available capacity on the Channel. The capacity of the Channel shall, in addition to the main channel, include, without limitation, the vertical blanking intervals, the sub-carrier frequencies and all other associated spectrum, including, without limitation, capacity created through the use of digital compression or other technological advances.

2.2. Use. Lessee shall have full, complete and exclusive use of the Channel twenty-four (24) hours a day, seven (7) days a week. Lessee shall be entitled to use the Channel for any lawful purpose, consistent with the License and pertinent FCC rules and regulations, including, but not limited to, the transmission of video, voice and data, two-way communication and frequency reuse, without restriction on the substance, format or type of information or signal to be transmitted thereover.

Article III TRANSMISSION SITE AND EQUIPMENT

3.1. The Transmission Site.

(a) Lessor and Lessee acknowledge that the License currently requires Lessor to construct and operate the Station at First Interstate Bank, 1000 Louisiana, Houston, Texas (the "Transmission Site"). Lessor further acknowledges, however, that the Transmission Site may not be the optimum location for Lessee's use of the Channel throughout the Term and agrees, therefore, that upon the written request of Lessee, it will undertake any and all actions necessary to provide for the prompt relocation of the Station to a site identified by Lessee, consistent with the License and pertinent FCC rules and regulations, including, but not limited to, promptly applying to, and taking all reasonable and necessary actions to expeditiously secure from, the FCC approval of the relocation and such associated modifications to the License as Lessee shall request, provided, however, that any such relocation shall not, in Lessee's reasonable judgment and consistent with sound commercial practices, adversely affect the value of the License. Lessee shall bear all reasonable costs, including, but limited to, any cost to terminate an existing lease at the Transmission Site, associated with the relocation of the Station undertaken at its request. In the event Lessor proposes to relocate the Transmission Site, Lessor shall notify Lessee in writing of the proposed relocation, which notice shall specify the relocation site, provided, however, that Lessor shall secure Lessee's consent for such relocation, such consent not to be unreasonably withheld, prior to such relocation. Lessor shall not relocate the Transmission Site to a location which Lessee notifies Lessor in writing would be adverse to Lessee's interests hereunder; provided, however, that Lessor may relocate the Transmission Site in order to comply with applicable federal, state or local laws or regulations.

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(b) Lessor shall promptly assign the lease for the Transmission Site (the "Site Lease") to Lessee; having first secured any and all necessary and appropriate consents and approvals for such assignment, and thereafter, Lessee shall be exclusively responsible for all lease payments and other obligations of the lessee thereunder. Concurrently with such assignment, Lessee shall sublet the Transmission Site to Lessor, through a sublease arrangement permissible under the Site Lease and, as required, with the consent of the lessor. Upon expiration of the Agreement or in the event of a termination of the Agreement pursuant to Article VIII hereof, Lessee shall promptly reassign the Site Lease to Lessor. A copy of the Site Lease is attached hereto as Exhibit 1.

3.2 Construction of the Station. From time to time during the Term, Lessor shall construct and modify the Station to facilitate the full use of the Channel by Lessee in accordance with written requests by Lessee and consistent with the License and pertinent FCC rules and regulations, undertaking, among other things, to promptly apply to, and to take all reasonable and necessary actions to expeditiously secure from, the FCC approval of such modifications to the License as Lessee shall request; provided, however, that any such modification to or construction of the Station shall not, in Lessee's reasonable judgment and consistent with sound commercial practices, adversely affect the value of the License. Lessor shall provide Lessee with continuing access to and use of such portion of the Transmission Site as is necessary and appropriate to facilitate the full use of the Channel by Lessee and to accommodate such equipment as Lessee shall utilize in operating the Station. Lessee shall bear all reasonable costs associated with the construction and modification of the Station undertaken at its request. In the event Lessor proposes any modification to or construction of the Station, Lessor shall notify Lessee in writing of the proposed modification of or construction of the Station and shall specify the nature and extent of any such modification or construction, provided, however that Lessor shall secure Lessee's consent for the proposed modification to or construction of the Station, such consent not to be unreasonably withheld, prior to any such modification or construction. Lessor shall not undertake any modification to or construction of the Station which Lessee notifies Lessor in writing would be adverse to Lessee's interests hereunder; provided, further, however, that Lessor may undertake such modification to or construction to comply with applicable federal, state or local laws or regulations.

3.3 Operation and Maintenance. Lessee shall operate and maintain the Station in good condition and repair, and consistent with the License and all applicable federal, state and local laws. Lessee shall promptly repair or replace all defective or malfunctioning equipment associated with the Station and shall promptly notify Lessor of all material repairs. Lessee shall bear all costs associated with the operation, maintenance and repair of the Station.

3.4 Equipment. Lessor shall make available for Lessee's exclusive use during, and hereby leases to Lessee for the Term, all equipment currently associated with the Station (the "Station Equipment"). Lessee shall bear all costs associated with the acquisition of equipment necessary and appropriate to the operation of the Station during the Term, including, but not limited to, equipment acquired to replace equipment currently associated with the Station;

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provided, however, that Lessee shall retain title to all equipment acquired by Lessee during the Term of the Agreement. In the event of a termination of the Agreement pursuant to Article VIII hereof, or upon expiration of the Agreement, Lessor shall have the right to purchase any such equipment acquired by Lessee for the fair market value thereof; and provided further, however, that Lessee shall lease to Lessor for the annual sum of one dollar (\$1.00) during the Term of the Agreement all equipment to which it retains title and Lessor shall make available for Lessee's exclusive use during the Term of the Agreement all such Equipment.

3.5. Insurance. Lessee shall, at its own cost and expense, maintain with sound and financially reputable insurers, insurance with respect to the Transmission Site, the Station and the Station Equipment against casualty and other losses of the kinds customarily insured against by firms of established reputations engaged in the same or a similar line of business, of such types and in such amounts as are customarily carried by firms comparable to Lessee under similar circumstances. Without limiting the generality of the above, Lessee shall maintain (i) worker's compensation insurance as prescribed by the law of the state in which Lessee's work hereunder will be performed; (ii) employer's liability insurance with limits of at least \$500,000 each occurrence; (iii) comprehensive general liability insurance (including, but not limited to, contractual indemnity liability insurance) with a general aggregate limit of \$2,500,000 and limits of \$500,000 on account of any one occurrence; (iv) product liability insurance with limits of at least \$2,500,000 for bodily injury, including death, to any one person; (v) professional errors and omissions liability insurance of \$500,000 each occurrence, with a general aggregate limit of \$1,000,000; and (vi) such other insurance as Lessor shall reasonably require from time to time. Lessee shall, upon request, provide Lessor with a certificate of insurance of such coverage as is required to be maintained pursuant to this Section 3.5. Such certificate shall name Lessor as an additional insured and shall provide that such insurance shall not be cancelable except upon 60 days' notice.

3.6. Compliance with Regulatory Requirements. Lessor shall retain ultimate control of the Station in accordance with FCC rules and policies and shall have unfettered access thereto. Construction, operation, maintenance and repair of the Station by Lessee pursuant to this Agreement shall be subject at all times to Lessor's oversight, review and control.

3.7. Agreements. Lessor shall enter into such agreements with third parties, including, but not limited to, holders of other FCC licenses, as shall be necessary and appropriate to facilitate the full use of the Channel by Lessee in accordance with written requests by Lessee and consistent with the License and pertinent FCC rules and regulations; provided, however, that the term of any such agreement shall be coterminous with the term of this Lease; and further provided, that any such requested agreement shall not, in Lessee's reasonable judgment, and consistent with sound engineering practices, adversely affect the value of the License.

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Article IV LEASE FEES

4.1. Lease Fees. Lessee shall pay to Lessor a monthly fee of Seven Thousand Five Hundred Dollars (\$7,500.00) for lease and use of the Channel, the Station and the Station Equipment (the "Lease Fees"). Subject to Article VI, below, the Lease Fees shall be paid by the tenth day of each month. Fees for any partial month shall be pro-rated to the number of days in such partial month. Past due Lease Fees shall bear interest at the rate of 1.5% per month from the date that such fee is payable.

4.2. Adjustments. The Lease Fees shall be increased by fifteen percent (15%) at the beginning of each Renewal Term.

4.3. Taxes. Lessee shall pay all duties, levies, including regulatory fees and assessments, and taxes, including but not limited to, sales, property, ad valorem and use taxes, or any tax in lieu thereof, imposed by any local, state or federal government or governmental agency with respect to the Channel and the Station, excepting only any taxes on or measured by the income of Lessor.

Article V REGULATORY ACTIVITIES

5.1. Retention of License. Lessor shall use its best efforts, consistent with sound business practice, to maintain in force, and to renew when required, the License and all licenses, permits and authorizations or approvals necessary to operate the Channel and the Station, including, but not limited to, opposing all applications to the FCC, the grant of which would preclude, impair or adversely impact the operation of the Channel and/or the Station and, consistent with written requests of Lessee, taking such actions as may be necessary and appropriate to prevent actions by others which would interfere with or adversely impact the operation of the Channel and/or the Station. Lessee shall bear all reasonable costs associated with activities undertaken to retain and/or to preserve the License.

5.2. Modification of License. Lessor shall promptly apply for and use its best efforts, consistent with sound business practice, to prosecute any modifications to the License requested by Lessee in writing. Lessee shall bear all reasonable costs associated with activities undertaken to modify the License.

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Article VI PURCHASE OPTION

6.1. Grant of Option. Lessor hereby grants to Lessee the irrevocable, exclusive right and option to acquire from Lessor all of Lessor's right, title and interest in and to the License, the Transmission Site, the Station and the Station Equipment (the "Option") for One Million Dollars (\$1,000,000.00) (the "Purchase Price").

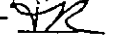
6.2. Option Consideration. On the Effective Date, Lessee shall pay to Lessor on the Effective Date Thirty Thousand Dollars (\$30,000) (the "Option Consideration"). The Option Consideration shall be nonrefundable unless this Agreement is terminated pursuant to Paragraph 8.1 or clause (ii) or (iii) of Paragraph 8.2, hereof as a result of an act or omission of Lessor, or unless Lessor fails to or is unable to execute the Purchase Agreement in accordance with Section 6.4, below, and make the representations and warranties regarding the License set forth therein. Lessor shall be entitled to retain the Option Consideration in the event this Agreement is terminated pursuant to Paragraph 8.1 or clause (ii) or (iii) of Paragraph 8.2, hereof as a result of an act or omission of Lessee.

6.3. Option Period. The Option may be exercised by Lessee at any time during the Initial Term.

6.4. Exercise of the Option. The Option may be exercised by Lessee by delivery to Lessor of written notice of Lessee's exercise of the Option. In the event that Lessee exercises the Option, Lessor and Lessee shall execute within ten (10) business days thereafter a Purchase Agreement substantially in the form attached hereto as Exhibit 2. In accordance with the attached Purchase Agreement, Lessee shall exercise the Option either by acquiring the License, the Transmission Site, the Station and the Station Equipment directly or by doing so indirectly through acquisition of the interests of the partners, joint venturers and stockholders holding interests in Lessor.

6.5. Elections. On the Effective Date, each Lessor shall elect (a) to receive its pro-rata share of the rent for the first 12 months of the Initial Term in cash ("Option A"); or (b) to receive all or a portion of its share of the Purchase Price in cash, or in a combination of cash and the unregistered common stock of Lessee ("Option B"). In the event that a Lessor shall elect Option A, such Lessor shall receive its entire share of the Purchase Price in cash. In the event that a Lessor shall elect Option B, such Lessor shall elect to receive its share of the Purchase Price as (i) all cash; (ii) 75% cash and 25% unregistered common stock of Lessee valued at \$5.00 per share; or (iii) 50% cash and 50% unregistered common stock of Lessee valued at \$8.00 per share. In the event Lessee is wholly acquired by an entity (a "Successor Company") prior to the Closing under the Purchase Agreement, a Lessor which has elected the option set out in either clause (b)(ii) or (b)(iii) above shall receive unregistered common stock of the Successor Company equivalent in monetary value to the number of shares of unregistered common stock of Lessee

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
valued at \$5.00 or \$8.00 per share, as applicable, to which Lessor would have been entitled had Lessee not been acquired prior to the Closing, calculated by (i) dividing 25% or 50%, as applicable, of Lessor's total Purchase Price under this Agreement by \$5.00 or \$8.00, as applicable, (ii) multiplying the result by a fraction the numerator of which shall be the opening trading price of Lessee's common stock on the day the acquisition of Lessee by the Successor Company is closed and the denominator of which shall be the opening trading price of the Successor Company's common stock on that same day.

Article VII REPRESENTATIONS AND WARRANTIES

7.1. Representations of Lessor. Each of the entities collectively referred to herein as Lessor, for itself only, represents and warrants to Lessee as follows:

- (i) It is an entity duly organized, validly existing and in good standing under the laws of the State of its formation;
- (ii) It has the power and authority to execute, deliver and perform this Agreement and its execution and delivery of this Agreement and its performance hereunder have been duly authorized by all requisite action;
- (iii) This Agreement has been duly executed and delivered by it and is a valid and binding agreement enforceable in accordance with its terms against it;
- (iv) The execution and carrying out of this Agreement and compliance with the provisions hereof by it will not, with or without the giving of notice and/or the passage of time, conflict with or result in any breach of any of the terms or conditions of, or constitute a default under, its documents of formation and/or governance or any indenture, mortgage, agreement, or other instrument to which it is a party or by which it is bound;
- (v) The License (a) is lawfully held jointly by Lessor and Lessor is eligible to hold the License, (b) authorizes as shown thereon Lessor to construct and operate a facility transmitting video and audio signals on the Channel at the Transmission Site, (c) is in full force and effect, and (d) is not subject to any conditions other than such conditions as are shown thereon or generally applicable to MDS licenses and permits issued by the FCC. To the best of its knowledge, no reason exists that the License will not, subject to the filing of a timely application for renewal, be renewed in the ordinary course;
- (vi) All notices, reports and other documents which have been or are required by the FCC and other federal, state and local authorities with respect to the

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
License and the Station (a) have been filed, and (b) were true, complete and accurate when filed and remain true, complete and accurate; and

- (vii) With respect to the License and the Station, Lessor (a) is in material compliance with, and not in default under or in violation of, the Communications Act of 1934, as amended ("Communications Act"), and the rules and regulations of the FCC promulgated thereunder ("FCC Rules"), as well as the rules and regulations of other federal, state and local authorities, (b) has not received any notice of such noncompliance or default, (c) has timely paid all fees, charges and forfeitures due the FCC, (d) has met all applicable FCC construction deadlines, and (e) is not aware of any condition or occurrence which, in itself or with the giving of notice or the lapse of time or both, would (1) constitute or result in a violation of the Communications Act, any FCC Rule or any rule or regulation of other federal, state and local authorities, (2) constitute a default in the due performance and observation of any term, covenant or condition of the License, (3) result in a suspension, termination, revocation, material impairment, or material adverse modification of the License, or (4) adversely affect any of the material rights of Lessor under the License;
- (viii) It has not been notified that the Station has created or is creating objectionable interference which adversely impacted or is adversely impacting the operation of other facilities licensed by the FCC to other individuals or entities;
- (ix) Lessor has good, valid, marketable and unencumbered title to the License.

follows:

- 7.2. Representations of Lessee. Lessee represents and warrants to Lessor as
- (i) It is a corporation duly organized, validly existing and in good standing under the laws of the State of its formation;
 - (ii) It has the power and authority to execute, deliver and perform this Agreement and its execution and delivery of this Agreement and its performance hereunder have been duly authorized by all requisite corporate action; and
 - (iii) This Agreement has been duly executed and delivered by it and is a valid and binding agreement enforceable in accordance with its terms against it.

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7.3. Survival of Representations and Warranties. The representations and warranties contained in this Agreement shall not in any respect be limited or diminished by any past or future inspection, examination or possession on the part of the Parties or their representatives of any records, documents, information or properties. Such warranties and representations shall be deemed to be continuing during the term of this Agreement, and each Party shall have the duty to promptly notify the other of any event or circumstance which might reasonably be deemed to constitute a breach of or lead to a breach of its warranties or representations hereunder.

Article VIII TERMINATION

8.1. Loss of License. Without further liability to either Lessor or Lessee, this Agreement shall terminate in the event that: (i) Lessor's authority to operate the Channels in accordance with the terms of this Agreement is terminated by the FCC (unless such termination is due to a breach by either Party of its obligations hereunder); or (ii) the FCC terminates Lessor's authority to lease the Channel in accordance with the terms and conditions of this Agreement; provided, however, that Lessor shall be required to use its commercially reasonable best efforts in order to retain the License and its ability to lease the Channel.

8.2. Termination for Default. This Agreement may be terminated without liability to the terminating Party: (i) at any time by mutual agreement of the Parties; (ii) immediately by the non-breaching Party upon a material breach, including the failure to pay Lease Fees pursuant to Article IV hereof, by the other Party if such material breach is not cured within thirty (30) days (or if not curable within thirty (30) days, if the other Party has not initiated curative actions within thirty (30) days) of written notice of the breach to the breaching Party by the terminating Party; or (iii) immediately by a Party upon institution by or against the other Party of any proceeding for relief under the Bankruptcy Code, the insolvency of the other Party or the appointment by a court of competent jurisdiction of a receiver of the other Party's property. Termination shall be effective upon written notice of such termination by the terminating Party to the other Party; provided, however, that neither termination nor expiration of this Agreement shall relieve either Party of liabilities previously accrued hereunder.

8.3. In the event of a material breach by a Party under this Agreement, the other Party, in addition to having the right to terminate this Agreement without liability, may pursue such other remedies as may be available to it at law or in equity.

8.4. Each Party agrees and acknowledges that the other would be irreparably damaged by a breach of this Agreement, which damage could not be adequately compensated except by specific performance by the breaching Party. In the event that such a breach has occurred or is threatened, it is agreed that the non-breaching Party shall be entitled to temporary

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and permanent injunctive relief, including, without limitation, specific performance of this Agreement, without any showing of actual damage or inadequacy of legal remedy in any proceeding which may be brought to enforce this Agreement.

Article IX INDEMNIFICATION

9.1. Indemnification by Lessor. To the extent permitted by law, Lessor hereby covenants and agrees to, and shall, indemnify, defend and save harmless Lessee, its owners, members, directors, officers, employees and agents (the "Lessee Indemnitees") from and against and shall reimburse any Lessee Indemnitee on demand for all liabilities, direct losses or damages, claims, demands, actions, reasonable costs and expenses (including without limitation, reasonable court costs and attorneys' fees) which any of the Lessee Indemnitees may suffer, sustain, incur, pay or expend by virtue or as a result of (i) any material breach or default by Lessor of any of its covenants, agreements, duties or obligations hereunder, (ii) any material breach or default of, or inaccuracy or omission in, any representation or warranty of Lessor contained herein, or (iii) any of the acts, omissions, negligence or willful misconduct of Lessor, its owners, members, directors, officers, employees and agents in connection with the performance of this Agreement.

9.2. Indemnification by the Lessee. To the extent permitted by law, Lessee hereby covenants and agrees to, and shall, indemnify, defend and save harmless the Lessor, its owners, members, directors, officers, employees and agents (the "Lessor Indemnitees") from and against and shall reimburse any Lessor Indemnitee on demand for all liabilities, direct losses or damages, claims, demands, actions, reasonable costs and expenses (including without limitation, reasonable court costs and attorneys' fees) which any of the Lessor Indemnitees may suffer, sustain, incur, pay or expend by virtue or as a result of (i) any material breach or default by Lessee of any of its covenants, agreements, duties or obligations hereunder, (ii) any material breach or default of, or inaccuracy or omission in, any representation or warranty of Lessee contained herein, (iii) any of the acts, omissions, negligence or willful misconduct of Lessee, its owners, members, directors, officers, employees and agents in connection with the performance of this Agreement, (iv) claims by customers or subscribers of Lessee or to its services; (v) actions by the FCC or other federal, state or local governmental authorities regarding the Station; (vi) Lessee's construction, operation, maintenance and repair of the Station; (vii) claims of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name or service mark or claims that the content of any program transmitted over the Channel violates any pornography, obscenity laws, or infringes privacy rights or any other claimed harm or unlawfulness arising from the transmission of any programming; and (viii) claims for infringement of patents arising from Lessee's use of the Station.

9.3. Claims for Indemnification. Where indemnification under this Article is sought by a Party (the "Claiming Party"): (a) it shall notify in writing the other Party (the

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
"Indemnifying Party") promptly of any claim or litigation or threatened claim to which the indemnification relates; (b) upon the Indemnifying Party's written acknowledgment of its obligation to indemnify in such instance, in form and substance satisfactory to the Claiming Party, the Claiming Party shall afford the Indemnifying Party an opportunity to participate in and, at the option of the Indemnifying Party, control, compromise, settle, defend or otherwise resolve the claim or litigation (and the Claiming Party shall not effect any such compromise or settlement without prior written consent of the Indemnifying Party); and (c) the Claiming Party shall cooperate with the Indemnifying Party in its above-described participation in any compromise, settlement, defense or resolution of such claim or litigation. In the event that the Indemnifying Party does not so acknowledge its indemnification responsibility, the Claiming Party may proceed directly to enforce its indemnification rights.

Article X ASSIGNMENTS

Except as otherwise expressly provided herein, neither Party shall have the right to assign this Agreement or its rights and obligations hereunder without the prior written consent of the other Party and any attempted assignment in violation of this restriction shall be deemed null and void. Lessee may assign this Agreement and its rights and obligations hereunder without the consent of Lessor if and only if (i) the assignee agrees in writing prior to such assignment to assume all remaining obligations and responsibilities of Lessee under this Agreement, and (ii) Lessee guarantees in writing prior to such assignment the performance by the assignee of all remaining obligations and responsibilities of Lessee under this Agreement. The License may not be assigned and control of Lessor may not be transferred during the Initial Term of this Agreement. The License may be assigned and control of Lessor may be transferred after the expiration of the Initial Term of this Agreement with Lessee's prior written consent, such consent not to be unreasonably withheld; provided, however, that all obligations and responsibilities under this Agreement shall be assumed by any such assignee or transferee for the entire remaining Term of this Agreement, including any Renewal Term(s).

Article XI MISCELLANEOUS

11.1. Relationship of the Parties. This Agreement does not constitute either Party as a joint venturer, partner or employee of the other Party or an agent or representative of the other Party. Neither Party shall have the right, power or authority, nor shall hold itself out as having the right, power or authority, to create any contract or obligation, express or implied, binding the other Party.

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11.2. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, APPLICABLE TO AGREEMENTS MADE AND TO BE ENTIRELY PERFORMED THEREIN.

11.3. Notices. All notices, demands, requests, solicitations of consent or approval, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given when received by hand delivery, telecopy (followed by mailed notices as hereinafter provided), overnight delivery service, with acknowledged receipt, or when received by U.S. mail if sent, postage prepaid, by registered or certified mail, return receipt requested, addressed to the other Party at the addresses listed below for that Party, or to such other addresses which such Party shall have given for such purpose by notice hereunder.

If to Lessor:

Private Networks, Inc.
c/o Billy J. Parrott
276 Fifth Avenue, Suite 301
New York, NY 10001

If to Lessee:

People's Choice TV Corp.
5301 E. Broadway
Tucson, Arizona 85711
Attn: Todd A. Rowley, Senior Vice President

with a copy to (which shall not constitute notice):

People's Choice TV Corp.
2 Corporate Drive, Suite 249
Shelton, Connecticut 06484
Attn: Donald Olander, General Counsel

11.4. Interpretation and Construction The headings and captions of this Agreement are inserted for convenience and identification only and are in no way intended to define, limit or expand the scope and intent of this Agreement or any provision hereof. Where the context so requires, the singular shall include the plural. The references contained in this Agreement to "Sections" are to sections of this Agreement unless the context clearly requires otherwise.

11.5. Amendment and Waiver Unless otherwise provided herein, this Agreement may be amended or terminated only by an instrument in writing duly executed by the Parties. Any waiver by any Party of any breach of or failure to comply with any provision of this Agree-

Initials: Lessor
Lessee -



ment by the other Party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other provision hereof.

11.6. Third Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective assigns (as permitted hereunder), heirs, successors and legal representatives. It is not the intent of the Parties that there be any third party beneficiaries of this Agreement, and this Agreement is exclusively for the benefit of the Parties hereto or their respective assigns.

11.7. ENTIRE UNDERSTANDING. THIS AGREEMENT SETS FORTH THE ENTIRE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ALL PRIOR AGREEMENTS AND COLLATERAL COVENANTS, ARRANGEMENTS, COMMUNICATIONS, REPRESENTATIONS AND WARRANTIES, WHETHER ORAL OR WRITTEN, BY EITHER PARTY (OR ANY OWNER, MEMBER, OFFICER, DIRECTOR, EMPLOYEE OR REPRESENTATIVE OF EITHER PARTY) WITH RESPECT TO THE SUBJECT MATTER HEREOF.

11.8. Severability If any provision or provisions of this Agreement are determined to be invalid or contrary to any existing or future law, statute or ordinance of any jurisdiction or any order, rule or regulation of a court or regulatory or other governmental authority of competent jurisdiction, such invalidity shall not impair the operation of or affect those provisions in any other jurisdiction or any other provisions hereof which are valid, and the invalid provisions shall be construed in such manner as shall be as similar in terms to such invalid provisions as may be possible, consistent with applicable law; provided, however, that if a provision cannot be severed without substantially diminishing the economic value of this Agreement to a Party, that Party, notwithstanding anything to the contrary herein, may terminate this Agreement on ninety (90) days' written notice to the other Party consistent with Article VIII, hereof.

11.9. Further Assurances From time to time after the date of execution, the Parties shall utilize their best efforts, consistent with sound business practice, to take such further action and execute such further documents, assurances and certificates as either Party may reasonably request of the other in order to effectuate the purpose of this Agreement. In addition, each Party agrees that it will not take any action which would adversely affect the rights granted by it to the other Party hereunder.

11.10. Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither Party shall be liable to the other for failure to perform any obligation under this Agreement (nor shall any charges or payments be made in respect thereof) if prevented from doing so by reason of fires, strikes, labor unrest, embargoes, civil commotion, rationing or other orders or requirements, acts of civil or military authorities, acts of God or other contingencies beyond the reasonable control of the parties, and all requirements as to notice and other performance required hereunder within a specified period shall be automatically extended to

Initials: Lessor - BP
Lessee - TR

accommodate the period of dependency of any such contingency which shall interfere with such performance.

11.11. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original for all purposes, but all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the Parties have caused this MDS LEASE AGREEMENT to be executed as of the day and year first above written.

LESSOR

LESSEE

PRIVATE NETWORKS, INC.

PEOPLE'S CHOICE TV CORP.

By: Billy J. Parrott

By: Todd A. Rowley

Name: BILLY J. PARROTT

Name: Todd A. Rowley

Title: PRESIDENT

Title: Sr. V. P.

Initials: Lessor - JS
Lessee - SR

For Purposes of Section 6.5: ELECTION

PRIVATE NETWORKS, INC.

By Billy J. Parrott Option A
Billy J. Parrott

Houston, TX
A Group
-
WHR492

WHR 492
(HOUSTON)

ITFS AIR TIME ROYALTY AGREEMENT

THIS AGREEMENT, is made this 19 day of December, 1991 by Region IV Education Service Center, a Texas governmental entity, (hereinafter referred to as "Lessor") having its principal place of business at 7145 West Tidwell Road, Houston, Texas 77092-2096 and People's Choice TV of Houston, Inc., a Delaware Corporation (hereinafter referred to as "Lessee") having its principal place of business at 233 N. Garrard, Rantoul, Illinois 61866.

WHEREAS, Lessor has been licensed by the Federal Communications Commission ("FCC") to operate Instructional Television Fixed Service ("ITFS") station WHR-492 utilizing the channels designated as the A Group channels from a site at Crosby, TX; and

WHEREAS, Lessor has also been licensed by the FCC to operate ITFS station WHQ-281 utilizing the channels designated as the F Group channels from a site at the Texas Commerce Bank Tower, Houston, TX; and

WHEREAS, Lessee is developing a wireless cable system to provide subscription television programming to paying subscribers within the Houston Consolidated Metropolitan Statistical Area (the "Metropolitan Area") and has entered into agreements securing to it the right to utilize stations in the ITFS, OFS and Multipoint Distribution Service ("MDS") that Lessee intends to locate at the wireless cable headend it is planning to construct at either the Commerce Bank Tower or the First Interstate Bank Tower, in Houston, TX; The network of co-located Channels thus created shall hereinafter be described as "Lessee's Wireless Cable Television System"; and

WHEREAS, among those agreements referenced in the preceding paragraph is an agreement with Robert S. Moore ("Moore"), the MDS tentative selectee for the F Group channels in the Metropolitan Area; and

WHEREAS, Lessor desires to migrate WHQ-281 from the F Group channels to other ITFS channels in order to avoid the risks and restrictions imposed by the FCC on ITFS licensees of the F Group channels; and

WHEREAS, Lessee desires to migrate WHQ-281 from the F Group channels to other ITFS channels in order to expedite the licensing of Moore's proposed station and to lease excess capacity on WHR-492 and WHQ-281 following construction of those stations at the transmission site Lessee chooses for its wireless cable headend; and

WHEREAS, the FCC has authorized ITFS licensees to lease excess capacity on their systems for non-ITFS purposes and Lessor has determined that after satisfaction of its educational requirements there will be excess capacity available on WHR-492 and WHQ-281 following construction of those stations at whichever site Lessee

chooses for its wireless cable headend; and

WHEREAS, the parties acknowledge and agree that the rights reserved to them under this Agreement are of a special, unique, and unusual character with a peculiar value.

Since the dissemination of educational programming is significantly increased at a reasonable or no additional cost as a result of the integrated ITFS and Wireless Cable TV System, it is consequently determined that each Channel is being used substantially for ITFS purposes in serving the good of the public.

NOW THEREFORE, in consideration of the mutual promises, undertakings, covenants and conditions set forth herein the Lessor and Lessee do hereby agree and warrant as follows:

1) TERM OF AGREEMENT.

a) Initial Term. The term of this Agreement shall commence upon the date of its execution and shall extend for an initial term of ten (10) years from the Start Date as defined in Paragraph 11 hereof. Said period is hereinafter referred to as the "Initial Term".

b) No Rights Beyond Term of Licenses. Lessor and Lessee agree that this Agreement shall not give rise to any rights or remedies beyond the expiration of any FCC license necessary for the continued operation of the Channels, whether such expiration occurs during the Initial Term, or the term of any Renewal. Provided, however, that while this Agreement is in effect, Lessor shall obtain and maintain in force all licenses, permits and authorizations required or desired in connection with the use of the Channels. Lessor shall take all necessary steps to renew the licenses for the Channels and shall not commit any act or engage in any activity which could reasonably be expected to cause the FCC to impair, restrict, revoke, cancel, suspend or refuse to renew the ITFS licenses. Lessor shall take all reasonable steps to comply with the Communications Act of 1934 as amended and the rules and regulations of the FCC, and shall timely file all reports, schedules and/or forms required by the FCC to be filed by Lessor.

c) Renewals/Right of First Refusal. Provided Lessor has not offered to renew the Lease upon the same terms and conditions or Lessee has rejected said offer, Lessor grants Lessee a right of first refusal on any competing proposals for lease agreements or transfer or assignment of all or any part of the Channels received by Lessor within sixty (60) months after the expiration of the Initial Term. If any acceptable offer to lease, transfer or assign all or any part of the Channels is made to Lessor, Lessor shall give written notice to 5 yrs.

Lessee within the First Refusal Period describing the person to whom the proposed lease, transfer or assignment of all or any part of the Channels is to be made, the fees, charges, rental or other consideration to be received for the lease, transfer, assignment of all or any part of the Channels, the terms thereof and generally the relevant other terms and conditions of the lease, transfer or assignment. Lessee shall have a period of thirty (30) days after its receipt of such notice from Lessor in which to elect, by giving written notice to Lessor, to lease any or all of leased Channels for the same fees, charges, rental or other consideration for which Lessor proposed to lease, transfer or assign all or any part of the Channel or Channels to the third person.

If the fees, charges, rental or consideration to be paid by the third person was to be in whole or in part in form other than cash, the consideration to be paid by Lessee shall be in cash in an amount fairly equivalent to the fair market value of the consideration payable by the third person and shall be so stated by Lessee as a sum certain in its notice of election.

If Lessor does not believe Lessee's stated offer is in an amount fairly equivalent to the fair value of the consideration payable by the third person and so notifies Lessee in writing within seven (7) days after Lessor's receipt of Lessee's notice of election to so lease, Lessee may elect within five (5) days after its receipt of such notice from Lessor to refer such question for determination by an impartial arbitrator and the right of first refusal of Lessee shall then be held open until five (5) days after Lessee is notified of such determination. Said arbitrator shall be chosen either by agreement of Lessee and Lessor at the time such question arises, or, at the option of either party, by referring the question to the American Arbitration Association with instructions that the American Arbitration Association select a single arbitrator under a request from the parties for expedited and accelerated determination. The determination of the arbitrator chosen under either option contained in this subparagraph shall be final and binding upon Lessee and Lessor. The parties shall share equally in the costs and fees of the Arbitration. This arbitration shall take place in Houston, Texas.

In the event Lessee shall elect to exercise its said right of first refusal, the lease agreement shall be consummated on the fifteenth (15th) day following the day on which Lessor received notice of Lessee's election to exercise the right of first refusal or the day upon

which any question required to be determined by the arbitrator hereunder has been determined, or at such other time as may be mutually agreed. The right of first refusal is terminated either by the lease to Lessee as provided herein or by notice to Lessee of the Lessor's proposal to lease or transfer the Channels or any part to a third person and Lessee's unwillingness or failure to meet and accept such a bonafide offer pursuant to the times and procedures as set forth above, provided that such proposed lease is consummated at the same fees, charges, rental or other consideration and upon the same terms as to which said right of first refusal applied, within ninety (90) days after Lessee's right of first refusal had expired or has been specifically waived by written notice given to Lessor by Lessee.

- e) Operation During Extended Term. If Lessee and Lessor are unable to reach agreement for a Renewal, and providing that Lessor's FCC license(s) for the Channels is maintained per FCC continued authorization, this Agreement shall remain in effect for a reasonable period but not more than twelve (12) months after the Expiration Date of this Agreement on the same terms and conditions as are provided for in this Agreement, in order to afford each party an opportunity to prudently avail itself of alternative distribution facilities. On the last day of this twelve (12) month period (the "Extended Expiration Date"), Lessee shall cease to lease the Channels.

2) ALLOCATION OF AIR-TIME.

- a) Lessor's Primary Air Time. To the extent allowed by the FCC rules and regulations and any amendments thereof, Lessor agrees to lease to Lessee the exclusive use of excess capacity air-time on Lessor's channels as more fully set forth herein. As used in this Agreement the phrase "Excess Capacity Air-time" means all air time on the Channels apart from "Lessor's Primary Air Time."
- b) Lessor's Primary Air Time. Lessor reserves for each Channel licensed, a minimum of twenty (20) hours of air-time each week (Monday through Sunday) to be used for its ITFS scheduled programs aired between the hours of 7:30 a.m. and 9:00 p.m. including a minimum of three (3) hours per week day (Monday through Friday) excluding Holidays and vacation days. This air-time is described as "Lessor's Primary Air-Time".
- c) Lessor's Ready Recapture Air Time. Lessor also preserves for any current or expanded accredited ITFS program scheduling needs, an additional twenty (20) hours of air-time each week for each licensed Channel

(Monday through Sunday), between the hours of 7:00 a.m. and 6:59 a.m., including up to three (3) hours per weekday (Monday through Friday), excluding Holidays and vacation days. This air time shall be known as "Lessor's Ready Recapture Air Time".

- d) Schedule of Air Time. Attached hereto and made a part hereof as Exhibit A, is the schedule which depicts the agreement of the parties as to the use of Lessor's primary channels. This schedule reflects among other things the hour reserved by Lessor for its primary Air Time and its Ready Recapture Air Time.
- 1) Maximum Channel Usage. The following maximum channel usage rules shall apply notwithstanding any other language in this Agreement to the contrary.
(A) On Mondays through Fridays from 6:00 a.m. to 7:30 a.m. Lessor shall not transmit programming over more than one (1) Channel; Lessor shall not transmit programming over more than five (5) Channels simultaneously during the hours of 7:30 a.m. and 3:30 p.m.; Lessor shall not transmit programming over more than two (2) Channels during the hours between 3:30 p.m. and 6:30 p.m.; Lessor shall not transmit programming over more than one (1) Channel during the hours between 6:30 p.m. and 9:00 p.m.; Lessor shall not transmit programming over more than zero (0) Channels between 9:00 p.m. and 11:30 p.m.; Lessor shall not transmit programming over more than one (1) Channel between 11:30 p.m. and 1:00 a.m. and over more than two (2) Channels between 1:00 a.m. and 6:00 a.m. (B) For Saturdays, Sundays and Holidays, Lessor shall not transmit programming over more than two (2) Channels between 8:00 a.m. and 11:00 a.m. and more than one (1) Channel between the hours of 11:00 a.m. and 7:00 p.m.; Lessor shall not transmit programming over more than zero (0) Channels between 7:00 p.m. and 10:30 p.m. and more than one (1) Channel between 10:30 p.m. and 7:00 a.m. Other than during those hours of each day noted above, Lessor shall not transmit programming over the Channels.
- e) Change of Schedule. There shall be no economic or operational detriment borne by Lessor arising from its use of Lessor's Ready Recapture Air Time. Lessor agrees to provide Lessee with a one-hundred twenty (120) day notice of any intended modification of its use of scheduled Air Time. The maximum number of Channels upon which Lessor may simultaneously broadcast shall be limited, all as provided in Paragraph d(1) above.
- f) Use of Vertical Blanking Intervals. To the extent that Lessor's use will not violate the provision of Paragraph

2 (j), Lessor reserves for its exclusive use twenty-five percent (25%) of the vertical blanking intervals, associated subcarriers and fifty percent (50%) of the response Channel time that are a part of Lessor's licensed ITFS spectrum. To the extent not reserved herein by Lessor, Lessee shall have the exclusive right to use the vertical blanking intervals, subcarriers and the associated response Channel(s) of the Channels.

- g) Lessor's Increase in Scheduling. Lessor acknowledges that a significant capital expenditure is to be made by Lessee for the mutual benefit of the parties to this Agreement. Lessor expressly agrees to use its best efforts to take no action not authorized by this Agreement which would jeopardize the ability of Lessee to fully recover its investment through its provision of services contemplated by this Agreement. In this regard, it is acknowledged that Lessor's primary purpose for Air-Time use is to provide accredited educational programming. In the event that Lessor seeks to broadcast programming other than during Lessor's Primary Air-Time or Lessor's Ready Recapture Air-Time, thereby reducing Lessee's Excess Capacity Air-Time to less than 128 hours per Channel per week (Monday-Sunday), then Lessor shall provide Lessee with 120 days notice of this intent. Any such attempt to reduce Lessee's Excess Capacity Air-Time shall hereinafter be referred to as a "Significant Reduction in Lessee's Air Time". No significant Reduction in Lessee's Air-Time shall result from the use by Lessor of "Lessee's Other Air-Time" as provided on Exhibit A attached herewith.
- h) Significant Reduction in Lessee's Air Time. In the event Lessor seeks a Significant Reduction in Lessee's Air-Time, the parties hereto shall negotiate in good faith toward permitting Lessor to recapture time pursuant to its request. Before such recapture is allowed, the negotiations must result in mutually acceptable terms. In no event, however, shall Lessee be obligated to permit a Significant Reduction in Lessee's Airtime if after negotiating in good faith, the parties are unable to reach an agreement.
- i) Lessor's Isolated Use of Lessee's Airtime Use. Lessor and Lessee acknowledge that under unique conditions, Lessor may need to transmit programming during Lessee's Air-Time. Lessor shall have the right upon advance notice that is reasonable under the circumstances to pre-empt Lessee's programming on one Channel for a period of not more than two consecutive hours in any day, up to three times in any calendar year. Such isolated occurrences, shall not be considered a Significant Reduction in Lessee's Air Time. In no event

shall Lessee be required to permit the use of Lessee Air-Time for such isolated broadcasts if in Lessee's reasonable business judgment, its business will be negatively impacted by Lessor's pre-emption.

- j) Lessor's Use of Channels. Lessor recognizes the mutual benefits and technological advantages of the use of encoding methods for program security, equipment signaling and individual addressability control over unauthorized equipment use. Lessor agrees that its program services and air-time use will not harm or interfere with Lessee's current or future signal paths utilized within Lessee's System for program encryption, pilot carrier signaling and other technical needs utilized for the operation of such services provided by Lessee's System. Nor will Lessor, by its own action, or through a third party, during the term of this Agreement utilize any part of its licensed frequency spectrum to create or operate a service that is in competition with current, planned or future commercial services provided by Lessee's System.

3) TRANSMISSION SITE AND FACILITIES.

- a) Transmission Site. In its discretion, Lessee shall select the Commerce Bank Tower or the First Interstate Bank Tower as the Transmission Site for the provision of the services contemplated by this Agreement. This site shall hereinafter be described as the "Transmission Site". Lessee shall contract for a lease of space at the Transmission Site upon such terms as the parties agree. The Transmission Site and Lease shall comply with the standards, specifications and regulations of the FCC rules and order pertaining to Lessor's ITFS license(s). Lessor shall file the appropriate applications with the FCC to secure authorization to operate the Channels from the Transmission Site. If upon reviewing Lessor's ITFS application the FCC directs Lessor to amend its application, including the terms and conditions of this Agreement, in order to bring the application within compliance with FCC regulations and guidelines for an application, modification or amendment for its license(s), the parties shall immediately negotiate in good faith toward the necessary revisions. Lessor shall file such agreed revisions to its FCC applications. If the parties hereto cannot agree upon such revisions, then this Agreement shall be terminated without further liability.
- b) Lessor's Sublease. Lessee shall ensure to Lessor's reasonable satisfaction that in any event of termination of this Agreement, Lessor shall have the option of continued occupancy and use of the transmission and

microwave relay sites for the purpose of fulfilling its ITFS and related FCC licensed requirements for a minimum of two (2) years. To ensure such is the case, Lessee shall provide for Lessor a sublease of facilities which house the Lessor's transmission, relay capacity and other related equipment. This sublease shall be upon terms and conditions reasonably acceptable to Lessor. Prior to Lessee executing any Lease for transmission or relay equipment space at a Transmission Site facility, Lessee shall give Lessor the right to review and approve both the facilities and terms of the proposed sub-lease.

- c) Preservation of STL/TSL. Lessee and Lessor shall use their best efforts so that Lessor shall be lawfully permitted to transmit signals from its studio to the Transmit Site and from the Transmit Site to Lessor's studio for two years after the termination of this Agreement.
- d) System Construction. Upon issuance by the FCC of appropriate authorization for the Channels at the Transmission Site, Lessee shall within a reasonable period of time, but not later than six (6) months thereafter, begin construction of the transmission facilities for the Channels. No later than twelve (12) months after the FCC authorizes the Channels at the Transmission Site, Lessee shall complete the construction of the Channels. At its expense, Lessee shall purchase and install such transmitters, transmission line, modulators, antennas, and other equipment as required to operate the Channels in accordance with the provision of said authorization and this Agreement. Any equipment so used for Lessor's exclusive behalf in said construction shall be Provided to Lessor pursuant to Paragraph 5 hereof. (Said equipment is hereinafter referred to as the "Provided Equipment"). Lessee further agrees throughout the term of this Agreement to provide Lessor with sufficient space at the Transmission Site for any equipment required to provide for Lessor's audio and video transmission needs for its ITFS programming. Lessee shall retain title to the Provided Equipment except as noted by Paragraph 15 herein.
- e) Maintenance of Transmission Equipment. Subject to Lessor's right to supervise the maintenance of this equipment, Lessee shall maintain and operate the Provided Equipment during the terms of this Agreement at its expense. Lessee shall also pay all ad valorem taxes assessed against the Provided Equipment.
- f) Interference. Lessee shall operate the Provided Equipment so that such operation does not create or

increase interference with electronic transmission of any other FCC licensees entitled to protection under FCC rules and regulations. If Lessee's operation of the Provided Equipment does so create or increase interference, Lessee shall pay all of the engineering and legal fees necessary to resolve the interference problem so created.

- g) Alterations and Attachments. Lessee, at its own expense, may make alterations of or attachments to the Provided Equipment and the equipment that is not exclusive to Lessor's use (the "Common Equipment") such as encoding and/or addressing equipment or other equipment as may be reasonably required from time to time by the nature of its business; provided however, that such alterations or attachments do not interfere with Lessor's signal or ongoing operations or violate any FCC rules or regulations; and provided further that FCC authorization, if required, is obtained in advance of any such alteration or attachment at the sole cost of Lessee. To the extent any FCC authorization pertaining to the Provided Equipment is required, Lessor agrees to use its best efforts to obtain such authorization. Lessee shall give Lessor notice and consult with Lessor prior to making alterations or attachments to the Common Equipment.
- h) Increase In Authorized Transmission Power Requirements. If Lessee or Lessor determines during the term of this Agreement that an increase, or due to future technology a decrease, in transmitter power is reasonably necessary to better serve its customers, the other party shall not unreasonably withhold its consent to such action. In this regard, Lessee's refusal to consent based on its good faith determination that the costs of the increase or decrease in transmitter power cannot be justified based on market conditions, after consulting with Lessor regarding the factors behind its determination, shall be deemed reasonable. Lessee shall, at its cost, perform such re-engineering studies as may be reasonably necessary and, upon completion of such re-engineering studies, Lessor shall, at Lessee's cost, file the appropriate applications with the FCC to secure approval for such modification for transmitter power. Upon approval of any such application by the FCC, Lessee shall at its expense forthwith commence to upgrade the transmission facilities for the Channels in accordance with such FCC authorization.
- i) Licensee Control and Liability. Nothing herein shall derogate from such licensee control of operations of the Channels that Lessor, as an FCC licensee, shall be required to maintain and Lessee acknowledges the

reservation by Lessor of such control.

- j) Boosters. Lessor hereby consents pursuant to Sections 21.913(a), 21.913(g)(7), 74.985(a) and 74.985(g)(7) of the FCC's Rules to retransmissions of the Channels by boosters (sometimes referred to as beam benders) installed by Lessee.

4) LESSOR'S RECEIVE SITES.

- a) Receive Site Equipment. Attached hereto as Exhibit B is a copy of FCC form 330, Section IV listing the receive sites designated by Lessor to receive its ITFS programming. Those receive sites shall be installed at Lessee's expense with a Standard Installation. If as the result of any relocation of the Transmit Site, the equipment at Lessor's existing sites must be reoriented and or upgraded, Lessee shall pay the cost of same. As used herein for the purposes of this Agreement, the phrase "Standard Installation" shall mean an installation consisting of the placement of the ITFS/MMDS receiving antenna at an elevation (not to exceed thirty feet above the base mounting location for any new receive sites constructed and solely underwritten by Lessee), which could normally receive the line of sight transmission from the Transmission Site, the coupling thereto of a block down converter and a sufficient amount of transmission line (coaxial cable) to connect the received ITFS programming to the input of, (i) a standard television receiver or (ii) the receive sites internal/external distribution system. If the signals of Lessor's ITFS transmissions are channel-mapped or encoded by Lessee, Lessee shall ensure that Lessor's signals are receivable at receive sites without interruption of service and in a condition of no less of reception capability than is apparent today. At its expense Lessee shall maintain all reception equipment installed by Lessee pursuant to this paragraph 4(a).

- b) New Receive Site Construction. At Lessor's request, Lessee shall, at Lessee's expense, make a Standard Installation at certain of Lessor's new receive sites, in accordance with the following schedule: Beginning six months after the Start Date, Lessor may request that Lessee make such installations at no more than 150 new receive sites at a rate of no more than 12 receive sites per month.

Beginning eighteen months after the Start Date Lessor shall have the right to request Lessee to make Standard Installations at no more than 75 new receive sites at a rate of no more than twelve per month.

Beginning thirty months after the Start Date, Lessor shall have the right to request Lessee to make Standard Installations at no more than 25 new receive sites at a rate of no more than twelve per month.

Lessor, or Lessor's designate shall retain all such equipment installed pursuant to paragraphs 4(a) and 4(b) except for any addressable set top converter or such other processing equipment agreed to installed by Lessee which shall remain the property of Lessee.

Lessee shall have no obligation to maintain any receive site equipment installed by Lessee pursuant to this paragraph 4(b) except for the set top converters.

- c) Quality of Receive Site Signals. Lessee shall use its best efforts to see that the same quality and strength of the signal is received at Lessor's existing receive sites after any reorientation as existed before such reorientation. To this end, prior to the Certification Date, Lessor shall test the signals at each of Lessor's receive sites to establish a bench mark for the quality and strength of the transmissions at each receive site.

5) PROVISION OF EQUIPMENT.

- a) Lessor's Use of Provided Equipment. Lessee shall provide to Lessor the Provided Equipment during the term of this Agreement. A list of this equipment is attached hereto as Exhibit C and incorporated by reference herein. Lessor shall have no responsibility for the loss of or damage to the Provided Equipment during the term of this Agreement and Lessee shall bear all such responsibility, provided however, that Lessor be liable for any loss or damage to the Provided Equipment caused by any intentional or grossly negligent act of Lessor, its agents, affiliates, representatives or invitees. The Provided Equipment shall be Provided to Lessor by Lessee at no charge during the term of this Agreement.
- b) Lessee's Use of Lessor's Equipment. Lessor shall allow Lessee to use all that equipment, provided and installed by Lessor for Lessee's commercial use pursuant to this Agreement. This equipment is considered to be any and all equipment currently used in the operation of Lessor's ITFS distribution system, including STL's, transmitters, transmit antennae and receive equipment. This equipment is hereinafter referred to as "Lessor's Equipment". A list of Lessor's Equipment is attached hereto as Exhibit D and incorporated by reference hereto. Lessee shall have the right to use such equipment in Lessee's Wireless Cable Television System and shall properly maintain Lessor's Equipment used by

Lessee as noted herein at its expense. Lessee shall return Lessor's Equipment to Lessor upon termination of this Agreement in the same condition as it is delivered to Lessee, ordinary wear and tear excepted. There shall be no additional consideration paid by Lessee for the lease of this Equipment.

6) FEES AND OTHER FINANCIAL CONSIDERATIONS.

- a) Subscriber Royalty Fees. Beginning on the Start Date and continuing thereafter during the Initial and any Renewal Terms of this Agreement thereof, Lessee shall pay to Lessor monthly Subscriber Royalty Fees for each of the two 4-Channel ITFS groups included within this Agreement.

(i) Subject to the provisions of paragraph 6(a)(ii) Lessee shall pay to Lessor the monthly per-Subscriber Royalty Fee for each 4-channel group, reflected in Column B below. Subject to the provisions of paragraph 6(a)(ii), in no event shall the monthly payment to be made by Lessor to Lessee be less than the monthly minimum payment reflected in Column C below.

A	B	C
Number of Months After Start Date	Monthly Per Sub Fee For Each 4 Channel Group	Monthly Minimum Payment
1 - 12	\$.135	0
13 - 24	.155	\$ 1,000
25 - 36	.175	1,500
37 - 48	.195	2,000
49 - 60	.215	3,000
61 - 120	.215	3,000

(ii) Advance Payment of Subscriber Royalty Fees. For each four channel group of ITFS Channels that is subject to this Agreement Lessee shall make the following prepayments of Subscriber Royalty Fees to Lessor:

- a) Lessee shall pay to Lessor the sum of \$25,000 within thirty days after the Start Date as provided in Paragraph 11.
- b) Lessee shall pay to Lessor the sum of \$25,000 within fifteen days after the first anniversary of the Start Date.
- c) Lessee shall pay to Lessor the sum of \$33,333.33 within fifteen days after the thirtieth month after the Start Date.

- d) Lessee shall pay to Lessor the sum of \$16,666.67 within fifteen days after the thirty-sixth month after the Start Date.

All of the prepaid Subscriber Royalty Fees paid by Lessee shall be credited toward Lessee's obligation for Subscriber Royalty Fees as provided in Paragraph 6(a)(i). Until all of said prepaid Subscriber Royalty Fees have been earned in accordance with Paragraph 6(a)(i), the monthly Subscriber Royalty Fees actually paid by Lessee pursuant to Paragraph 6(a)(i) shall be \$1,000.00. Any earned monthly Subscriber Royalty Fee in excess of \$1,000 shall be debited against the prepaid Subscriber Royalty Fees provided for in this Paragraph 6(a)(ii) until all of Lessee's prepaid Subscriber Royalty Fees have been earned.

- b) Computation of Subscribers / Multiplexing. All computations of Subscriber Royalty Fees herein shall be based upon the average number of subscribers subscribing to Lessee's subscription television programming service for the Channels. As used herein, the term "Subscriber" means a person who is paying for Lessee's basic (most widely used) programming service. For purposes of this paragraph the average number of subscribers shall equal the number of subscribers as of the last day of the prior month plus the number of subscribers as of the last day of the current month divided by two.

For purposes of this paragraph (a) in situations where programming is sold in bulk (that is, where a number of viewing units are grouped for billing purposes -- such as may be the case with hotels and some multiple dwelling units), the number of equivalent subscribers shall be determined by dividing the total recurring Basic Service monthly revenues derived from said bulk billing point by Lessee's then prevailing retail Basic Service monthly rate for the equivalent programming service to individual subscribers in the Metropolitan Area.

- (i) Lessee shall have the right to incorporate a Channel expansion or multiplex technology, thereby increasing the number of the Channels used pursuant to this Agreement. If Lessee so elects and the multiplexing is not the result of a Significant Reduction in Lessee's Air-Time, then in addition to the fees payable as provided in paragraph 6 (a) Lessee shall pay an additional monthly multiplex surcharge to the Subscriber Royalty Fees payable pursuant to paragraph 6 (a) and such shall be as then agreed by the parties,

but in no event shall the increase in Subscriber Royalty Fees that results from this surcharge be greater than the proportionate increase in the Basic Subscriber monthly recurring fees charged by Lessee to its subscribers after multiplexing; less the monthly cost to Lessee for the additional capital investment in customer equipment multiplexing required. For purposes of this paragraph the monthly cost to Lessee for the capital investment in customer equipment which shall be computed by amortizing the capital investment in customer equipment shall be computed by amortizing monthly over five years the actual cost to Lessee of the additional subscriber equipment at an interest rate two percent (2%) greater than the prime lending rate then in effect in the Metropolitan Area.

- c) Required Certificate and Payment Dates. Lessee, shall, within thirty (30) days of the end of each month in which Air-Time is leased hereunder, provide Lessor with a certificate certified as accurate and correct by an authorized agent of Lessee showing the average number of Basic subscribers served during said month. The Subscriber Royalty Fees to be paid by Lessee hereunder shall accompany each required certificate.
- d) Right to Audit. Lessee shall for a period of three (3) years after their creation, keep, maintain and preserve complete and accurate records and accounts, including all invoices, correspondence, ledgers, financial and other records pertaining to Lessee's use Air-Time and Lessor's charges hereunder; and such records and corporate accounts shall be available for inspection and audit at Lessee's corporate offices or at Lessee's offices in the Metropolitan Area, as designated by Lessee, at any time or times during the term of this Agreement or within ninety (90) days thereafter, during reasonable business hours, by Lessor or its nominee. Notwithstanding the foregoing, Lessor shall be entitled to only one audit of Lessee's records and accounts during any calendar year. Absent fraud, Lessor's review of the records and accounts shall be limited to the period since Lessor's last audit. In the event an error equal to or exceeding five percent of the total is found, Lessee shall bear all of Lessor's reasonable costs incurred in connection with the audit, including fees and expenses of Lessor's independent accountants. Lessor shall provide Lessee with fifteen (15) business days' advance notice of its intent to inspect said records and accounts prior to being allowed to do so. All information obtained by Lessor during any audit herein shall be maintained by Lessor in strict confidence, subject to the provisions of Paragraph 16B

hereof.

- e) Lessee's Grants to Lessor. In addition to the Subscriber Royalty Fees payable to Lessor, Lessee shall make the following grants to Lessor for each of the two 4-channel ITFS groups covered by this Agreement:
- (i) Lessee shall pay to Lessor the sum of \$25,000.00 within 30 days after the Condition Precedent Date as provided in Paragraph 11.
 - (ii) Lessee shall pay to Lessor the sum of \$16,666.66 by the Construction Beginning Date, as provided in paragraph 11 and 3(d).
 - (iii) Lessee shall pay to Lessor the sum of \$25,000 within six months of the Start Date.
- f) Fees and Expenses. In each instance in which this Agreement provides for the Lessor to take action at the FCC with respect to the Channels, the FCC licenses held by Lessor, or this Agreement, Lessee shall pay all costs associated with any such action, including attorney's and engineering fees and expenses. In each such instance, however, Lessor shall obtain Lessee's prior written consent before incurring such fees and expenses.

7) CONTROL OVER PROGRAMMING.

Lessee intends that only programming of a sort which would not serve to place Lessor's reputation in the community in jeopardy will be transmitted by Lessee on the Channels. In an attempt to minimize disputes, recognizing the difficulties, inherent in specifying exact standards herein, it is agreed that Lessee shall have the right to market the programming provided by the networks and services listed on Exhibit E. If, however, the programming content of any of the networks and services listed on Exhibit E materially changes in the good faith judgment of Lessor's Board of Trustees, as evidenced by its decision at a regular or special meeting at which Lessee shall be given the opportunity to be heard, Lessor shall have the right upon ninety (90) days notice, to deny Lessee the right to continue transmitting said networks programming on Lessor's Channels if Lessor would have the right to deny Lessee the right to transmit said programming under the provisions of this paragraph in the first instance. If Lessee proposes to transmit the programming of any new programming service on the Channels, then Lessee shall notify Lessor in writing specifying in detail the nature of the new programming service and Lessor shall have the right, upon written notice served upon Lessee within thirty (30) days after Lessor's receipt of any such notice from Lessee, to deny to Lessee the right to transmit any programming service on the Channels if said programming is obscene and/or

contradicting local, state and/or federal laws or otherwise violates any federal, state or local laws or regulations, or policies of Lessor. If no such denial notice is received by Lessee within said thirty (30) days Lessee shall be authorized to transmit all such services on the Channels for which no denial notice is received.

8) PROSECUTION OF PETITIONS, AUTHORIZATIONS AND LICENSES.

- a) Best Efforts to Secure Approval of this Agreement. The parties recognize that certain approvals will be required from the FCC in order to effectuate this Agreement. Both parties shall use their best efforts to prepare, file and prosecute before the FCC all petitions, waivers, applications and other documents necessary to secure any FCC approval required to effectuate this Agreement. Lessee shall assist in the preparation and prosecution of such applications and shall pay all filing fees, attorney's fees (providing Lessee has approved of the attorneys), engineering fees, and all other expenses in connection therewith. Lessor also agrees to cooperate at Lessee's sole expense with Lessee's efforts to cause other ITFS, MMDS, MDS and OFS operators to co-locate at the Transmission Site. Notwithstanding anything in this Agreement to the contrary, it is understood that no filing shall be made with the FCC with respect to this Agreement unless both parties have reviewed such filing and consented in writing to its submission and prosecution before the FCC.
- b) Further Efforts. Throughout the Initial Term, the Renewal Term and any Additional Renewals of this Agreement, Lessor shall use its best efforts to obtain and maintain in force all licenses, permits and authorizations required for Lessee and Lessor to use the Channels as contemplated by this Agreement. When mutually agreed by the parties and at Lessee's sole expense, Lessor shall apply for, and use its best efforts to obtain those reasonable license modifications which would assist Lessee in its business. Lessor also shall consider filing, at Lessee's sole expense, such reasonable protests, comments or other petitions to deny any other ITFS, MMDS, MDS and or OFS applications or amendments as may be requested by Lessee in the mutual best interests of the parties and the public. Lessor and Lessee shall promptly notify each other of any event of which it has knowledge that may affect any of the licenses, permits or authorizations affecting the Channels.

9) TERMINATION.

- a) Termination of FCC Authorization. This Agreement shall

terminate in the event that for any reason (i) Lessor shall not be licensed on the Channels or (ii) the FCC shall terminate Lessor's authority to lease the Channels in accordance with the terms of this Agreement.

- b) Termination by Reason of Default or Nonperformance. At the option of the non-defaulting party, this Agreement may be terminated upon the material breach or default by the other party of its duties and obligations hereunder if such breach or default is not cured by such defaulting party and if such breach or default shall continue for a period of thirty (30) consecutive days after such defaulting party's receipt of notice thereof from the non-defaulting party (or in the case of a breach or default which is not capable of being cured in said thirty (30) day period, if the party in breach or default does not, within such thirty (30) day period, commence and diligently pursue steps to cure such breach or default). It is understood and agreed that any failure on the part of Lessee to make any payment required under Paragraph 6 hereof shall be a material breach or default of its duties and obligations hereunder.
- c) Termination Upon Lessee's Exit From Market. Lessee shall have the right to terminate this Agreement at anytime after five years after the Start Date if Lessee is no longer conducting its wireless pay television business in the Metropolitan Area. To exercise this right Lessee shall give Lessor notice at least 90 days notice of its intent to terminate.
- d) Remedies to Continue. In the event of termination of this Agreement pursuant to (a) or (b), such termination shall not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of a breach or default of this Agreement. Furthermore, in the event of a material breach or default which is not cured, the defaulting party may elect against termination and pursue all other remedies as permitted by law.
- e) Specific Performance. The parties acknowledge and agree that the rights reserved to each of them hereunder are of a special, unique, unusual and extraordinary character, which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in an action at law, and the wrongful termination of this Agreement by either party will cause the other party irreparable damage and injury.

10) TRANSFER OF RIGHTS AND OBLIGATIONS.

Lessee shall have the right to assign its rights under this lease as collateral for any financing arrangements it makes. Lessee shall also have the right to pledge the Provided Equipment as collateral or security for any loans it makes, provided, however that any pledge of the Provided Equipment shall be made subject to the provisions of this Agreement. Lessee shall provide Lessor with an estoppel certificate from any such Lender affirming that such Lender shall be bound by the rights of Lessee in this Agreement. Lessee shall further have the right to subcontract any portion of its obligations under this Agreement to any partnership, joint venture, corporation or entity which Lessee may choose, provided that Lessee gives Lessor notice of any proposed subcontracting and, provided further, that no such subcontracting shall release Lessee from fulfilling all of its obligations under this Agreement. Apart from the forgoing, neither party may assign or transfer its rights, benefits, duties or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

11) DATES FOR LESSEE'S PERFORMANCE.

- a) Start Date. For the purpose of this Agreement, the Start Date shall be that date given in writing by Lessee to Lessor not more than thirty (30) days after the authorization to Lessor by the FCC to operate the Channels in accordance with the terms of this Agreement, such date to be no more than thirty (30) days after the date of such notice.
- b) Condition Precedent/Condition Precedent Date. As used herein, "Condition Precedent" shall mean the issuance of a Final Order by the FCC authorizing all FCC licensees in any way affiliated with Lessee's Wireless Cable Television System in the Metropolitan Area to locate and build their transmission facilities at the Transmit Site. As used herein, "Condition Precedent Date" shall mean the date on which the Condition Precedent occurs.
- c) Construction Beginning Date. As used herein, the "Construction Beginning Date" is the date by which Lessee shall begin construction of the transmission facilities for the Channels at the transmission Site, as provided in paragraph 3(d).
- d) Construction Completion Date. As used herein, the "Construction Completion Date" is the date by which Lessee shall complete construction of the transmission facilities for the Channels at the Transmission Site and file to the FCC for Certification of the Channels, as provided in paragraph 3(d).

12) INDEMNIFICATION.

Lessee shall forever protect, save and keep Lessor and its permitted successors and assigns harmless and indemnify Lessor against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever, including reasonable attorneys' fees, which arise directly and indirectly out of (i) the negligence or willful misconduct of Lessee, its agents or employees, in connection with the performance of this Agreement, (ii) any programming transmitted by Lessee pursuant to this Agreement, (iii) any and all dealing by Lessee or any of its authorized agents or subcontractors with the public, third parties and subscribers to the Lessee's programming service or (iv) any maintenance, installation or other work performed by Lessee or any authorized agent or subcontractor under this Agreement.

Lessor shall notify Lessee of any stated claim for indemnity promptly upon receipt of same. Lessor shall have the option to defend, at its own expense, any claims arising under this Paragraph. If Lessee assumes the defense of any such claim, Lessor shall delegate complete and sole authority to the Lessee in the defense thereof; provided, however, that Lessee shall not settle any such claim in any manner that would restrict Lessor's rights to the full enjoyment of the provisions of this Agreement or would subject Lessee to any liability without Lessor's prior written consent. In the event that Lessee assumes the defense of a claim, Lessor may participate in the defense of the claim at its own expense. Nothing herein shall be construed as a waiver of Lessor's governmental immunity.

13) INSURANCE.

- a) Policies Required. At its expense, Lessee shall secure and maintain with financially reputable insurers, authorized to do business within the State of Texas, one or more policies of insurance insuring the Provided Equipment and Lessee's utilization of the Channels against casualty and other losses of the kinds customarily insured against by firms of established reputations engaged in the same or similar line of business, of such types and in such amounts as are customarily carried under similar circumstances by such firms, including, without limitations: (i) "All risk" property insurance covering the Provided Equipment and the Common Equipment to the extent of one hundred percent (100%) of its full replacement value without deduction for depreciation: (ii) comprehensive general public liability insurance covering liability resulting from Lessee's operation of the Provided Equipment on an occurrence basis having minimum limits of liability in an amount of not less than one million dollars.

(\$1,000,000.00) for bodily injury, personal injury or death to any person or persons in any one occurrence, and not less than two million dollars (\$2,000,000.00) in the aggregate for all such losses during each policy year, and not less than one million dollars (\$1,000,000.00) with respect to damage to property; (iii) all workers compensation, automobile liability and similar insurance required by law.

- b) Insurance Policy Forms. All policies of insurance required by this paragraph shall, where appropriate, designate Lessor as either the insured party or as a name additional insured, shall be written as primary policies, not contributory with and not in excess of any coverage which Lessor shall carry, and shall contain a provision that the issuer shall give to Lessor thirty (30) days prior written notice of any cancellation or lapse of such insurance or of any change in the coverage thereof.
- c) Proof of Insurance. Executed copies of the policies of insurance required under this section or certificates thereof shall be delivered to Lessor not later than ten (10) days prior to the Start Date. Lessee shall furnish Lessor evidence of renewal of each such policy not later than thirty (30) days prior to the expiration of the term thereof.

14) RELATIONSHIP OF PARTIES.

Lessor and Lessee by the provisions of this Agreement intend to enter an Air-Time Lease relationship and not a joint venture. They will carry out this Agreement to preserve that intent. Neither party shall represent itself as the other party, nor as having any relationship with one another, except as Lessor and Lessee under the terms of this Agreement.

15) PURCHASE OPTION.

- a) Lessor's Option - No Default. In the event that this Agreement is terminated by reason other than by default by Lessor or Lessee, Lessor shall have the option to purchase the Provided Equipment used exclusively for Lessor's ITFS license. Any equipment which is used in a shared fashion (such as transmit antenna, decoders, combiners) ("Common Equipment") in providing signals other than Lessor's signals and excluded from this option to purchase. The intent of the purchase option provided for in Paragraph 15 (a) and (b) is to provide Lessor with the capability to continue to perform pursuant to Lessor's ITFS license. The purchase price shall be the then book value (depreciated cost of assets) of said equipment as noted above. The equipment

subject to Lessor's purchase option, with the depreciation schedule to be utilized by Lessee, and the Common Equipment not subject to Lessor's purchase option, are listed in Exhibit C to this Agreement.

- b) Lessor's Default. If this Agreement is terminated by reason of Lessor's default, Lessor shall have the same option to purchase the Provided Equipment described in paragraph 15 (a) except that the price to be paid shall be the lesser of (i) the initial cost of all equipment purchased by Lessee for said equipment, or (ii) the cost to replace the equipment at the time of the exercise of the option.
- c) Lessee's Default. If this Agreement is terminated due to Lessee's default, Lessor shall have the same option to purchase the Provided Equipment described in paragraph 15(a) except the purchase price shall be \$1.
- d) Lessee's Option to Purchase Frequencies. If during any term of this Agreement the FCC modifies its rules so as to enable Lessee to be licensed to operate the ITFS frequencies, Lessee shall have a right of first refusal to acquire the licenses for the Channels subject to the same terms and conditions as the right provided for in paragraph 1 (c).

16) NON-DISCLOSURE.

Lessor acknowledges that there may be made available to it pursuant to this Agreement proprietary information and certain business and marketing techniques, services of Lessee and matters relating to the encoding and/or decoding system associated with the equipment for the Channels and its patented processes, including, but not limited to, improvements, innovations, adaptations, inventions, results or experimentation, processes and methods, whether or not deemed patentable, (all herein referred to as "Confidential Information"). Lessor acknowledges that this Confidential Information has been developed by Lessee at considerable effort and expense and represents special, unique and valuable, proprietary assets of Lessee, the value of which may be destroyed by unauthorized dissemination. Lessee shall clearly identify at the time of delivery to Lessor all information that lessee considers "Confidential Information." Confidential Information shall not include information which (i) is or becomes generally available to the public, other than as a result of an unauthorized disclosure by Lessor or any of its employees, representatives or agents, (ii) was available to the Lessor on a non-confidential basis prior to its disclosure to Lessor, or (iii) becomes available to the Lessor on a non-confidential basis from a source other than Lessee or Lessee's representatives, provided that such source

is not bound by a confidentiality agreement with Lessee or is not otherwise prohibited from transmitting the information to Lessor. Accordingly, Lessor covenants and agrees that, except as may be required for the performance of this Agreement, or compliance with any applicable law, neither it nor any of its employees, representatives, agents or affiliates shall disclose such Confidential Information to any third person, firm, corporation or other entity for any reason whatsoever, said undertaking to be enforceable by injunctive or other equitable relief to prevent any violation or threatened violation thereof. In the event that Lessor receives a request for the disclosure of confidential information in accordance with the Texas Open Records Act or other provision of applicable law, Lessor shall promptly notify Lessee of such request. Lessor shall cooperate with Lessee, at Lessee's sole cost and expense, in protecting such information from disclosure in accordance with the procedures established by the Texas Open Records Act or other applicable law; however, a disclosure made in compliance with the Texas open records act or other applicable law shall not be deemed to be a violation of this Agreement. It is agreed that Lessor's obligation under this Section shall be to use its reasonable efforts to inform its employees, representatives, agents and affiliates of the confidentiality obligations imposed by this Section 16 and to assist Lessee at Lessee's expense in any action at law or in equity to protect Lessee's confidential information. Lessor shall have no liability to Lessee for the actions of any employee, representative, agent, or affiliate, if Lessor has complied with its obligations as set forth in the previous sentence and has not specifically authorized a disclosure of confidential information in violation of this provision.

17) FORCE MAJEURE.

If by reason of force majeure either party is unable in whole or in part to perform its obligations hereunder, the party shall not be deemed in violation of default during the period of such inability; provided however that this Paragraph shall not excuse Lessee from paying any monthly minimum fees required by Paragraph 6 of this Agreement. As used herein, the phrase "Force Majeure", shall mean the following: acts of God, acts of public enemies, orders of any branch of the government of the United States of America, any state or any political subdivisions, thereof which are not the result of a breach of the Agreement, orders of any or military authority, insurrections, riots, epidemics, fires, civil disturbances, explosions, or any other cause or event not reasonably within the control of the adversely affected party.

18) CONDITION PRECEDENT.

This Agreement is conditioned on the issuance of a Final Order by the FCC granting Lessor authorization to operate the

Channels in the Metropolitan Area for the uses contemplated under this Agreement from the Transmission Site. By "Final Order" the parties mean an action or order of the FCC which is not reversed, stayed, enjoined, vacated, set aside, annulled or suspended and with respect to which no timely-filed request for administrative or judicial review is pending and as to which the time for filing any such request, or for the FCC to set aside the action on its own motion, has expired.

Lessee shall use its best efforts to cause the Condition Precedent as defined in paragraph 11, to occur within two years of the date the FCC accepts the applications for settlement and migration to be filed. If the Condition Precedent has not occurred within two years of said date then Lessor shall have the right upon notice to Lessee, to terminate this Agreement. Lessor shall not, however, have the right to terminate any Market Reconfiguration Agreement as described in Paragraph 19 below.

19) RECONFIGURATION APPLICATIONS.

- a) The parties acknowledge that for technical reasons Lessor would prefer to migrate WHQ-281 from the F Group channels to channels elsewhere in the electromagnetic spectrum and the C Group channels are the only such channels that may become available to Lessor for such migration. Lessee agrees to utilize its reasonable best efforts to reach agreements with Hispanic Information and Telecommunications Network, Inc. ("HITN") and such other persons as may be required to permit Lessor to modify its license for WHQ-281 to specify the C Group channels. In the event that Lessee is able to reach such agreements, Lessee shall use its best efforts to prepare and deliver to Lessor both: (1) an application for modification of the license for WHQ-281 to specify the C Group channels, to relocate to Transmission Site and to otherwise conform WHQ-281 to reasonably acceptable technical specifications set forth and (2) an application for modification of the license for WHR-492 to relocate to the Transmission Site and to otherwise conform to reasonably acceptable technical specifications, each of which shall expressly provide that it is contingent upon a grant of the other.
- b) In the event that Lessee is unable to reach such agreements, Lessee shall use its best efforts to prepare and deliver to Lessor both: (1) an application for modification of the license for WHQ-281 to specify the G Group channels, to relocate to the Transmission Site and to otherwise conform WHQ-281 to reasonably acceptable technical specifications; and (2) an application for modification of the license for WHR-492 to relocate to the Transmission Site and to otherwise conform WHR-492 to reasonably acceptable technical specifications, each of

which shall expressly provide that it is contingent upon a grant of the other.

- c) In the event Lessee is unable to provide such applications within twelve months of the date hereof, this Agreement shall terminate. In the event Lessee provides such applications within twelve months of the date hereof, and subject to Subparagraph d), Lessor shall promptly execute such applications and deliver them to PCTV for filing. Such applications as Lessee provides are hereinafter referred to as the "Relocation Applications" and the channels specified therein are herein referred to as the "Channels".
- d) The parties acknowledge that Lessee is attempting to co-locate as many of the 2.5 GHz band channels as possible at whichever site it selects as the Transmission Site and desires to file as many of the necessary applications as possible simultaneously and in a coordinated manner. Therefore, Lessor agrees that if requested to do so by Lessee within twelve months of the date hereof, it will enter into a Market Reconfiguration Agreement in substantially the form of Exhibit F (subject to revision to reflect the identity of this Transmission Site and the participants in the agreement) provided that the applications to be filed by it thereunder comport with the requirements of Subparagraphs a) or b).

20) NOTICE.

Any notice required or permitted to be given under any provision of this Agreement shall be delivered personally or by certified mail to the address of the recipient first written above or such other address as shall be designated by the party on three day's notice. All notices shall be effective upon receipt. Notices may be sent by facsimile transmission to the number authorized in writing by a party, with a confirming copy mailed to the recipient at the recipient's address for notice. All notices for Lessee shall be directed to the attention of its President. All notices to Lessor should be directed to the attention of its Executive Director. A copy of any Notice to Lessee (which shall not constitute official notice) shall be sent to:

Mr. William R. Scott
Allen, Korkowski & Associates
122-125 North Garrard Street
Rantoul, IL 61866

A copy of any notice to Lessor (which shall not constitute notice) shall be sent to:

Mr. Max M. Addison

Bracewell, Patterson
2900 South Tower, Pennzoil Place
Houston, TX 77002-2781

and Instructional Television Operations Dept.
7145 W. Tidwell Road
Houston, TX 77092-2096

21) SEVERABILITY.

Should any court or agency determine that any provision of this Agreement is invalid, the remainder of the Agreement shall remain in effect.

22) VENUE AND INTERPRETATION.

Venue for any cause of action brought by or between Lessor or Lessee relating to this Agreement, shall be in Harris County, Texas and all provisions of this Agreement shall be construed under the laws of the State of Texas.

23) COUNTERPARTS.

This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and shall be effective when each of the parties hereto shall have delivered to it this Agreement duly executed by each of the other parties hereto.

24) ENTIRE AGREEMENT.

This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral or written provisions of any kind. The parties further agree that this Agreement may only be modified by written Agreement signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Houston, Texas as of the date and year first written above.

REGION IV EDUCATION SERVICE CENTER
INC. (Lessor)

PEOPLE'S CHOICE TV OF HOUSTON
A Delaware Corporation (Lessee)

By: W. M. G. [Signature]
Its Executive Director

By: _____
Its President

ADDENDUM TO AGREEMENT

This Addendum to Agreement ("Addendum") is made by and between the Region IV Educational Service Center ("Lessor"), and Peoples Choice T.V. of Houston, Inc. ("Lessee"), who agree as follows:

1. **Addendum to Agreement.** Lessor and Lessee are parties to that certain ITFS Air Time Royalty Agreement ("Agreement") dated as of the date of this Addendum. As a condition to the effectiveness of the Agreement, Lessee and Lessor agree that the Agreement is amended as set forth in this Addendum.

2. **Right of First Refusal.** The first sentence of Paragraph 1(C) is amended to read in its entirety as follows:

If this Agreement is not renewed upon expiration of its ten year Initial Term (other than a non-renewal under Paragraphs 9(B) or 9(C)), Lessee shall have a one time a right of first refusal on any competing proposals for lease agreements or transfer or assignment of all or any part of the Channels received by Lessor within sixty (60) months after the expiration of the Initial Term.

3. **Interest.** A new paragraph (g) is added to Paragraph 6 of the Agreement to read in its entirety as follows:

g) **Past Due Interest.** In the event that Lessee fails to make a payment within the time period required herein, such late payment shall bear interest on an annual basis commencing 30 days after the due date at the lesser of (i) the prime rate in effect in the Metropolitan area plus 2 percent or (ii) the highest lawful rate.

Executed as of December __, 1991.

REGION IV EDUCATION
SERVICE CENTER

PEOPLES CHOICE T.V.
PARTNERS OF HOUSTON, INC.

By: [Signature]
Name: _____
Title: [Signature]

By: _____
Name: _____
Title: _____

Houston, TX
B Group
-
WAU31

**AMENDED AND RESTATED
ITFS EXCESS CAPACITY LEASE AGREEMENT**

between

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON,

as Health Center,

and

PEOPLE'S CHOICE TV OF HOUSTON, INC.,

as Sprint

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EXHIBIT A: Provided Transmission Equipment and STL Equipment

EXHIBIT B: Current ITFS Receive Sites

EXHIBIT C: The Sprint System

EXHIBIT D: FCC Authorizations

**AMENDED AND RESTATED
ITFS EXCESS CAPACITY LEASE AGREEMENT**

THIS AMENDED AND RESTATED ITFS EXCESS CAPACITY LEASE AGREEMENT (the "Amended Agreement") is made effective as of June 1, 2002 (the "Effective Date") by and between The University of Texas Health Science Center at Houston, a state institution of higher education ("Health Center") and People's Choice TV of Houston, Inc. ("Sprint"), a wholly-owned subsidiary of Sprint Corporation.

WHEREAS, Health Center operates Instructional Television Fixed Service ("ITFS") call sign WAU-31 in Houston, Texas from a site located at 1000 Louisiana Street (29 degrees, 45 minutes, 30 seconds latitude North, 95 degrees, 22 minutes, 3 seconds longitude West) in Houston, Texas (the "Transmit Site") utilizing the four 6 MHz channels designated at 2506-2512 MHz (B1), 2518-2524 MHz (B2), 2530-2536 MHz (B3), and 2542-2548 MHz (B4) (each, a "Channel" and collectively, the "Channels") pursuant to a license issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, Sprint operates a wireless communications system in the Houston area that utilizes multiple ITFS and Multipoint Distribution Service ("MDS") channels that are licensed by the FCC either to Sprint or to others who lease capacity to Sprint to provide video and data services; and

WHEREAS, Sprint and Health Center are parties to that certain Instructional Television Fixed Service (ITFS) Lease Agreement For Excess Airtime Capacity, dated November 12, 1992, as amended by Amendment No. One dated on or about January 1, 1995 (collectively, the "Existing Agreement") pursuant to which Sprint leases from Health Center certain excess capacity on Health Center's ITFS facilities for commercial use; and

WHEREAS, the FCC has recently adopted new rules and policies with respect to the manner in which MDS and Health Centers and commercial lessee's may utilize the MDS and ITFS spectrum, and Health Center and Sprint desire to amend and restate the Existing Agreement to reflect the increased flexibility afforded under the FCC's new rules and policies, to promote a substantial reconfiguration of Sprint's transmission system (including the Channels) to permit the efficient use of MDS and ITFS spectrum for the distribution of digital, two-way broadband video, voice, data and other possible services, and to provide for the continued ability of Health Center to transmit from the Transmit Site during and following the term of this Amended Agreement.

NOW THEREFORE, in consideration of the mutual promises, undertakings, covenants and conditions set forth herein, Health Center and Sprint agree as follows:

SECTION 1. Effect on Existing Agreement. As of the Effective Date, this Amended Agreement supersedes and replaces the Existing Agreement in its entirety, except that Sprint will be obligated to pay to Health Center all periodic leasing fees due under Article VII of the Existing Agreement for Sprint's use of the Channels through the conclusion of the month in which the Effective Date occurs.

SECTION 2. Term of Amended Agreement. Subject to the provisions for earlier termination contained in Section 10 hereof, this Amended Agreement will extend for: (a) an initial term of five (5) years from the Effective Date (the "Initial Term"); (b) two additional terms of five (5) years each (each a "Renewal Term") unless Sprint notifies Health Center at least ninety (90) days before the end of the Initial Term or the first Renewal Term, as the case may be, that Sprint elects not to extend this Amended Agreement for the upcoming Renewal Term; and (c) should the FCC during the Initial Term or any Renewal Term revise its rules and policies to allow the length of leases of ITFS excess capacity to extend beyond fifteen (15) years, such number of additional terms of one (1) year each as are permitted by the FCC (each an "Extension Term") unless Sprint notifies Health Center at least ninety (90) days before the end of the second Renewal Term or the then-current Extension Term, as the case may be, that Sprint elects not to extend this Amended Agreement for the upcoming Extension Term. The Initial Term, any Renewal Term that goes into effect, and any Extension Term that goes into effect will herein be referred to collectively as the "Term."

SECTION 3. System Licensing and Deployment. Health Center acknowledges that, although the Channels are currently operating from the Transmit Site utilizing analog modulation, Sprint is entering into this Amended Agreement in contemplation of the use of the Channels in the deployment of a complex two-way broadband wireless system utilizing MDS and ITFS spectrum licensed to multiple parties and that, in the design of this system, Sprint may employ, among other techniques, digitization, cellularization, sectorization, subchannelization and/or superchannelization of some or all of the MDS and ITFS spectrum in order to increase spectral efficiency and minimize intra-system and inter-system interference. In furtherance of their objectives, the parties agree, subject to the other terms and conditions of this Amended Agreement (including, without limitation, the reimbursement by Sprint of the reasonable expenses incurred by Health Center pursuant to Sections 3.A. through 3.F., both inclusive) as follows:

A. Applications for New or Modified Facilities. Provided that the facilities proposed in such applications will not have a material adverse effect on the ability of Sprint to deliver Health Center's Services (as such term is defined in Section 5.C.i) to the ITFS Receive Sites (as such term is defined in Section 4.B) from the Transmit Site and subject to the provisions of Section 3.E., Health Center will complete, submit to the FCC on such date as requested by Sprint, and prosecute such applications for new response station hubs, for new high-power boosters, for any modification to facilities utilizing the Channels (including changes in location, power, polarization, antenna system design or coverage, or modulation) or for the addition of the I channels associated with the Channels (in which case such I channels shall be considered Channels for purposes of this Amended Agreement) as Sprint requests from time to time during the Term. Sprint will provide Health Center with the engineering portion of any application to be completed, submitted and prosecuted pursuant to this Section at least thirty (30) days in advance of the filing date specified by Sprint.

B. Channel Swaps. Provided that it will not have a material adverse effect on the ability of Sprint to deliver Health Center's Services to the ITFS Receive Sites from the Transmit Site and subject to the provisions of Section 3.E., Health Center

will complete, submit to the FCC on such date as requested by Sprint, and prosecute such applications as Sprint may request to effectuate an exchange of one or more of the Channels for the same number of other ITFS or MDS channels (except MDS Channel 2A) licensed in the same general geographic area as the Channels, and will thereafter consummate such exchange. Effective upon consummation of such exchange, any Channel(s) assigned by Health Center will no longer be considered as a Channel for purposes of this Amended Agreement, and any channel(s) assigned to Health Center will be considered a Channel for purposes of this Amended Agreement. ..

C. Coordination With Other Licensees. Provided that the facilities contemplated by such document will not have a material adverse effect on the ability of Sprint to deliver Health Center's Services to the ITFS Receive Sites from the Transmit Site and subject to the provisions of Section 3.E., Health Center agrees, upon request of Sprint, to execute and return to Sprint within fourteen (14) days of receipt any market coordination agreement, interference consent or similar document consenting to facilities of another licensee that would not otherwise be permitted under the FCC's rules and policies (a "Coordination Document").

D. Prosecution of Applications. Health Center will cooperate in Sprint's efforts to prepare, file and prosecute, at Sprint's expense, all necessary application amendments, briefs, pleadings, petitions for reconsideration, applications for review, waiver requests, documents and supporting data, and take all such actions and give all such notices as may be required or requested by the FCC or as may be appropriate to expedite the grant of the applications filed under this Amended Agreement without conditions materially adverse to Health Center and Sprint. In the event any person petitions the FCC to deny one or more of the FCC applications filed under this Amended Agreement or otherwise opposes one or more of such applications before the FCC, or in the event the FCC enters an order granting one or more of such applications and any person petitions for reconsideration or review of such order before the FCC or appeals or applies for review in any judicial proceeding, then if requested to do so by Sprint, Health Center must oppose such petition before the FCC or defend such order of the FCC diligently and in absolute good faith, to the end that the objectives contemplated by this Amended Agreement may be achieved, provided, however, any such defense and/or prosecution shall be subject to the approval by the Health Center and, in the case of litigation, the Texas Attorney General. In the event that the FCC denies one or more of the applications submitted under this Amended Agreement or grants one or more of such applications with conditions materially adverse to Sprint, then if requested to do so by Sprint, Health Center must seek reconsideration or review of such action diligently and in absolute good faith, to the end that the objectives contemplated by this Amended Agreement may be achieved.

E. Withdrawal of Application, Cancellation of Authorization or Delay in Construction. Health Center acknowledges that due to the complexities inherent in designing two-way digital broadband systems consistent with the FCC's rules and policies and coordinating such designs among multiple MDS and Health Centers or for other reasons, Sprint may, in its sole discretion, elect not to construct or operate facilities authorized to Health Center by the FCC in granting an application submitted

pursuant to Section 3.A. Upon request of Sprint, Health Center agrees that it will withdraw any pending application submitted pursuant to Sections 3.A. or 3.B., return to the FCC for cancellation any authorization secured by grant of an application submitted pursuant to Sections 3.A. or 3.B., or withdraw any filing submitted pursuant to Section 3.D. In addition, if requested to do so by Sprint, Health Center must complete, submit to the FCC on such date as requested by Sprint and prosecute an application for additional time to construct any facility authorized by grant of an application submitted pursuant to Section 3.A. or to consummate any channel swap authorized pursuant to an application submitted pursuant to Section 3.B.

F. Permissible Modifications, Low-Power Boosters, Etc. Provided that the facilities will not have a material adverse effect on the ability of Sprint to deliver Health Center's Services to the ITFS Receive Sites from the Transmit Site, Sprint may install facilities (including low-power boosters) or make facility modifications that are permitted under the FCC's rules without prior FCC authorization. Sprint will provide Health Center with the engineering portion of any notice or notification to be completed, submitted to the FCC and prosecuted pursuant to this Section at least thirty (30) days in advance of the installation or modification. Upon notice by Sprint of such installation or modification, Health Center will complete, submit to the FCC on such date as requested by Sprint and prosecute such notices or notifications as are required under the FCC's rules.

G. Reimbursement of Reasonable Expenses. Sprint agrees to reimburse Health Center's reasonable engineering and legal costs to review the technical portion, complete and prosecute pursuant to Section 3.D. any application to be submitted pursuant to Sections 3.A. and 3.B., to review any Coordination Document submitted pursuant to Section 3.C., or to review and complete any submission requested pursuant to Section 3.E. or Section 3.F., provided that, if requested in writing by Sprint, Health Center has given Sprint a good faith written estimate of such costs prior to incurring them and, in the event Sprint objects within a reasonable time in writing to such estimate as excessive, Health Center has made a good faith effort to address Sprint's concerns.

H. Amelioration of Adverse Effect. In the event that facilities operated as the result of either (i) the grant of any application submitted by Health Center pursuant to Sections 3.A. or 3.B., (ii) the submission to the FCC of any Coordination Agreement executed by Health Center pursuant to Section 3.C., or (iii) any notification submitted by Health Center pursuant to Section 3.F., actually has a material adverse effect on the ability of Sprint to deliver Health Center's Services to the ITFS Receive Sites from the Transmit Site, Sprint will ameliorate the material adverse effect at its sole cost and expense. Health Center will fully cooperate with Sprint's efforts to ameliorate such material adverse effect.

I. Notification Zones. Health Center agrees that neither Sprint nor any FCC licensee providing MDS or ITFS capacity to Health Center will be required either to provide advance notice to Health Center prior to any response station installation, or to professionally install any response station. In the event that Health

Center experiences interference due to block downconverter overload at an ITFS Receive Site it believes may be caused by a response station operated by or on behalf of Sprint, Sprint agrees to fully cooperate in curing such interference as follows: (i) upon request, Sprint will provide Health Center a list of all response stations installed within five miles of the affected ITFS Receive Site; (ii) Sprint will immediately assign a technical representative to assist in identifying the source of the interference; and (iii) if it is determined that one or more of Sprint's response stations are the source of the interference, Sprint will promptly cure the interference at Sprint's cost and expense. Health Center shall fully cooperate with Sprint's efforts to cure such interference.

J. Transmission Equipment.

i. **Provision of Transmission Equipment.** Throughout the Term, Sprint will provide Health Center, at no cost, with the use of such transmitters, combiners, waveguide or coaxial cable, transmission or response station hub antennas and associated combiners, jumpers and connectors (some or all of which may be shared with other licensees) as is required to construct the transmission facilities currently authorized by the FCC for the Channels or subsequently authorized pursuant to Sections 3.A. or 3.B. (unless such authorization is returned to the FCC by Health Center for cancellation pursuant to Section 3.E.) or for which a notification is submitted pursuant to Section 3.F. (collectively, the "Provided Transmission Equipment"). A list of the Provided Transmission Equipment is included on Exhibit A hereto. In the event that Sprint elects to digitally compress the Channels pursuant to Section 5.A., prior to commencing digital transmissions Sprint will provide Health Center at no cost with shared use of a Sprint digital controller and with use of one digital encoder, which Sprint may, at its sole discretion, install either at Health Center's program origination facility or at the Transmit Site (in which case Sprint will provide space for such encoder at no cost). Such controller and encoder shall become Provided Transmission Equipment. Subject to the provisions of Section 3.L.iii., Sprint will retain title to the Provided Transmission Equipment and will be responsible for the payment of all *ad valorem* taxes and other charges assessed against the Provided Transmission Equipment during the Term. Sprint, at its own cost and expense, may make such alterations of or attachments to the Provided Transmission Equipment as may be reasonably required from time to time by the nature of its business; provided however, that such alterations or attachments may not result in a material adverse effect on the transmission of Health Center's Services from the Transmit Site to the ITFS Receive Sites or violate any FCC rule.

ii. **STL Equipment.** Effective June 1, 2002 and continuing throughout the Term, Sprint will provide Health Center, at no cost, with the use of such transmission and reception equipment as is required to construct a point-to-point microwave link capable of transmitting two Program Tracks from Health Center's location to the Transmit Site (the "STL Equipment"). As an alternative to a point-to-point microwave link, Sprint will reimburse Health Center for the

cost of a broadcast quality direct fiber communications link provided by a third party provider and a nonbroadcast quality appropriate backup line (e.g., a T-1 line) from the Health Center's location to the Transmission site. A list of the STL Equipment or fiber link provider with associated costs as of the Effective Date is also included on Exhibit A. Subject to the provisions of Section 3.L.iii., Sprint will retain title to the STL Equipment and will be responsible for the payment of all *ad valorem* taxes and other charges assessed against the STL Equipment during the Term.

iii. **Operation and Maintenance.** Sprint will, at its sole expense (but subject to Health Center's right to supervise the maintenance and operation of the equipment operating under its FCC authorizations), maintain and operate the Provided Transmission Equipment and the STL Equipment during the Term in good working order in compliance with the FCC's rules and sound engineering practices. Health Center will promptly provide written notice to Sprint if any of the Provided Transmission Equipment or the STL Equipment is not maintained in compliance with the foregoing sentence. The Provided Transmission Equipment and the STL Equipment may be replaced or repaired, at Sprint's sole discretion, from time to time for maintenance purposes, to complete construction of subsequently authorized facilities, or for other purposes and Exhibit A will be deemed amended accordingly. Sprint will have no liability to Health Center for any losses or damages Health Center may suffer due to any malfunction of the Provided Transmission Equipment, the STL Equipment or any other equipment utilized by Sprint to deliver Health Center's Service to the Receive Sites from the Transmit Site, unless such losses or damages result directly from any willful act or gross negligence of Sprint or any of its employees or agents.

K. **Site Availability.** During the Term, Sprint will be responsible, at its sole cost and expense, for securing the rooftop, transmission tower, and equipment room space necessary for the installation of the transmission facilities authorized to Health Center for the Channels pursuant to this Amended Agreement. In addition, during the Term Sprint will provide space at the Transmit Site for the installation of the reception portion of the STL Equipment and, should Sprint elect pursuant to Section 4.C.i. to install a digital encoder at the Transmit Site, such digital encoder.

L. **Post-Agreement Considerations.**

i. **License at Transmit Site.** Upon expiration of the Term or the termination of this Amended Agreement pursuant to Section 10, Sprint will immediately cease use of the Channels. Upon expiration of the Term or the termination of this Amended Agreement pursuant to Section 10, unless Health Center holds an FCC authorization for one 6 MHz channel at the Transmit Site that can serve the ITFS Receive Sites, Sprint will arrange at no cost to Health Center such channel swaps as are necessary for Health Center to thereafter hold an FCC authorization for one 6 MHz channel at the Transmit Site that can serve the

ITFS Receive Sites. Pending the consummation of any such channel swap, Sprint will at no cost provide Health Center (through channel loading and/or channel shifting, at Sprint's sole discretion) sufficient capacity in its system to deliver Health Center's Services to the ITFS Receive Sites from the Transmit Site.

ii. **Continued Operation At Transmit Site.** Upon expiration or termination of this Amended Agreement (other than termination by Sprint pursuant to Section 10.A.), for so long as Sprint, in its sole discretion, utilizes space at the Transmit Site for other MDS or ITFS facilities leased or owned by it, Sprint will permit Health Center shared access to any MDS/ITFS combiner, waveguide or transmission antenna at the Transmit Site owned by Sprint, and space for one ITFS transmitter, the reception portion of the STL Equipment and, should Sprint have elected pursuant to Section 4.C.i. to install a digital encoder at the Transmit Site, such digital encoder, provided: (a) that Health Center reimburses Sprint for its *pro rata* share (calculated based on the ratio of 6 MHz to the total amount of spectrum licensed to the other MDS and ITFS facilities sharing such equipment) of the value of the shared equipment and of the ongoing costs of owning or leasing such space (including lease fees, utility expenses, taxes, costs of maintenance and repair of the shared equipment or space, any tower or building on which the equipment is mounted or in which the equipment is stored, and the systems for lighting, heating, ventilating, and cooling the space); (b) that such use by Health Center does not have a material adverse effect upon Sprint or its business or any other MDS or Health Center sharing the equipment or space; and (c) any lease pursuant to which Sprint is operating at the Transmit Site permits Sprint to allow Health Center occupancy, which permission Sprint will use commercially reasonable efforts to secure.

iii. **Option to Purchase Equipment.**

(a) Upon expiration of the Term or the termination of this Amended Agreement pursuant to Section 10, Health Center will have the option to purchase the transmitter being utilized at the Transmit Site to transmit Health Center's Service and the STL Equipment, or, at Sprint's sole discretion, comparable equipment. Such option may be exercised by giving written notice to Sprint within fifteen (15) days of the expiration of the Term or the termination of this Amended Agreement pursuant to Section 10. The parties will use commercially reasonable efforts to consummate the transaction as soon as practicable or, if a channel swap pursuant to Section 3.L.i. is required, upon the consummation of such channel swap. The purchase price for the transmitter and the STL Equipment will be _____ unless this Amended Agreement has been terminated by Sprint pursuant to Section 10.A.), in which case it will be the lesser of the replacement cost or fair market value.

(b) Upon expiration of the Term or the termination of this Amended Agreement pursuant to Section 10 (unless this Amended

Agreement is terminated by Sprint pursuant to Section 10.A.), Health Center will have the option to purchase the ITFS combiner, waveguide or transmission antenna being utilized at the Transmit Site to transmit Health Center's Service or, at Sprint's sole discretion, comparable equipment. Such option may be exercised by giving written notice to Sprint within fifteen (15) days of the expiration of the Term or the termination of this Amended Agreement pursuant to Section 10. The parties will use commercially reasonable efforts to consummate the transaction as soon as practicable or, if a channel swap pursuant to Section 3.L.i. is required, upon the consummation of such channel swap. If this Amended Agreement expires, is terminated by Sprint pursuant to Section 10.A., or is terminated pursuant to Section 10.B., the purchase price for the equipment made available pursuant to this Section or comparable equipment will be the lesser of (i) its fair market value as determined by an appraiser acceptable to both parties or (ii) its replacement cost. If this Amended Agreement is terminated by Health Center pursuant to Section 10.A., the purchase price for any or all of such equipment or comparable equipment will be

(c) Upon expiration of the Term or the termination of this Amended Agreement pursuant to Section 10, Health Center will have the option to purchase the Provided Transmission Equipment other than any Provided Transmission Equipment that Health Center has an option to purchase pursuant to Sections 3.L.iii.(a) and 3.L.iii.(b) as such exists at the time, or, at Sprint's sole discretion, equipment comparable to such equipment. Such option may be exercised by giving written notice to Sprint within fifteen (15) days of the expiration of the Term or the termination of this Amended Agreement pursuant to Section 10 and the parties will use commercially reasonable efforts to consummate the transaction as soon thereafter as practicable. The purchase price for such equipment will be the lesser of its replacement cost or fair market value as determined by an appraiser acceptable to both parties. All appraisal fees incurred in connection with this Section 3.L.iii. shall be split equally between Health Center and Sprint.

SECTION 4. ITFS Receive Sites.

A. Current ITFS Receive Sites. Attached to this Amended Agreement as Exhibit B is a list, as of the Effective Date, of the locations that are within both Health Center's FCC-defined protected service area and a circle centered at the Transmit Site and having a 35-mile radius and at which reception equipment has been installed to receive Health Center's Services from the Transmit Site (the "Current ITFS Receive Sites"). In the event that Health Center, during the Term, ceases to utilize Health Center's Services from the Transmit Site at a Current ITFS Receive Site, such location shall no longer be considered as a Current ITFS Receive Site and Health Center will so notify Sprint. To the extent that any equipment being utilized as of the Effective Date by

Health Center to receive transmissions over the Channels located at a Current ITFS Receive Site (the "Current ITFS Receive Site Equipment") is owned by Sprint, such equipment hereby becomes the sole property of Health Center. However, Sprint will, at the expense of Health Center, perform all repairs, maintenance and replacement of the Current ITFS Receive Site Equipment up to the Demark Point (as hereinafter defined), except as provided in Section 4.C. The actual cost of any such repair, maintenance and replacement work performed by or at the direction of Sprint, without markup or profit, will be reimbursed by Health Center to Sprint within thirty (30) days, after Health Center's receipt of an invoice therefor.

B. Additional ITFS Receive Sites. At any time during the Term, Health Center may designate to serve as additional ITFS receive sites locations that are within both its FCC-defined protected service area and a circle centered at the Transmit Site and having a 35-mile radius, that will utilize Health Center's Services, that will not suffer interference from previously licensed or proposed facilities, and that can receive transmissions from the Transmit Site with a Standard ITFS Installation (as defined below) (the "Additional ITFS Receive Sites"). Sprint will make a Standard ITFS Installation at such Additional ITFS Receive Site, subject to reimbursement by Health Center for Sprint's actual costs without markup or profit. Health Center must obtain and coordinate any required approvals or permits prior to the making of a Standard ITFS Installation at any Additional ITFS Receive Site. Sprint will install the equipment comprising a Standard ITFS Installation within ninety (90) days after the date Health Center certifies to Sprint and provides such other evidence as Sprint reasonably requests that Health Center has obtained all required approvals or permits for the making of the Standard ITFS Installation at the Additional ITFS Receive Site. Each "Standard ITFS Installation" shall consist of the installation of one antenna commonly installed within the Sprint System (however, in no event an antenna with a gain of more than 36 dbi and a largest dimension no greater than one meter on a mast no greater than thirty (30) feet in height), a downconverter, up to one hundred fifty (150) feet of connecting coaxial cable run through existing, readily-accessible conduit or along floors and walls, one decoder (if necessary), and such other miscellaneous equipment as is required to connect such equipment to a single television set or to the central signal input for an internal distribution system (the "Additional ITFS Receive Site Equipment"), such point of connection being herein referred to as the "Demark Point". Upon installation, the Additional ITFS Receive Site Equipment will become the property of Health Center. However, Sprint will, at the expense of Health Center, perform all repairs, maintenance and replacement of the Additional ITFS Receive Site Equipment up to the Demark Point, except as provided in Section 4.C. The actual cost of any such repair, maintenance and replacement work performed by or at the direction of Sprint, without markup or profit, will be reimbursed by Health Center to Sprint within thirty (30) days after Health Center's receipt of an invoice therefor. In the event that Health Center, during the Term, ceases to utilize Health Center's Services from the Transmit Site at an Additional ITFS Receive Site, such location will no longer be considered as an Additional ITFS Receive Site and Health Center will so notify Sprint. At any given time, the Current ITFS Receive Sites and the Additional ITFS Receive Sites then in existence will collectively be referred to as the

"ITFS Receive Sites" and the Current ITFS Receive Site Equipment and the Additional ITFS Receive Site Equipment then installed at the ITFS Receive Sites (including any equipment installed pursuant to Section 4.C.) will be referred to as the "ITFS Receive Site Equipment." Notwithstanding the foregoing, Health Center acknowledges that locations within either its FCC-defined protected service area or a circle centered at the Transmit Site and having a 35-mile radius may overlap with the FCC-defined protected service area of a co-channel or adjacent channel licensee. In such event, Health Center agrees that for purposes of Sections 3.A., 3.B., 3.C., 3.F. and 3.I., ITFS Receive Sites will not include any receive site that is located in the half of the overlap area that is furthest away from the Transmit Site, the halves of the overlap area being created by bisecting the overlap area with a line beginning and ending at the two points where the circles intersect. In addition, Health Center acknowledges that ITFS transmissions require an unobstructed transmission path between the Transmit Site and any ITFS Receive Site and that events beyond the control of Sprint, such as the construction of new buildings or the growth of trees, may block the path between the Transmit Site and an ITFS Receive Site. In the event such a blockage occurs such that an ITFS Receive Site can no longer be served from the Transmit Site, such ITFS Receive Site shall no longer be considered an ITFS Receive Site for purposes of this Amended Agreement.

C. Upgrading of ITFS Receive Sites

i. If Sprint exercises its right pursuant to Section 5.A. to digitally compress the Channels, prior to commencing digital transmissions Sprint will install at no cost one digital converter/decoder at each of the ITFS Receive Sites. Thereafter, Sprint will install additional digital converter/decoders at future ITFS Receive Sites as are necessary, subject to reimbursement by Health Center of Sprint's actual costs without markup or profit. Prior to commencing digital transmissions, Sprint will also upgrade the reception antenna, downconverter, and the internal wiring system leading to a single television or the central signal input for an internal distribution system at any ITFS Receive Site to the extent necessary to avoid any material adverse impact on the delivery of the Program Tracks to the ITFS Receive Site by virtue of the digital compression.

ii. Health Center will cooperate with Sprint in the making of technical modifications (including the installation of a new or modified decoder or the replacement of the antenna, downconverter or transceiver with a superior model) to any ITFS Receive Site should any such modification be required in order to avoid having facilities that are either proposed in an application submitted pursuant to Sections 3.A. or 3.B., contemplated by a Consent Document submitted pursuant to Section 3.C., installed pursuant to Section 3.F., or installed by any other entity leasing capacity to Sprint provided such action does not have a material adverse effect on the ability of Sprint to deliver Health Center's Services to the ITFS Receive Site from the Transmit Site. Sprint will complete such ITFS Receive Site modifications at its sole cost and expense prior to the operation of such facilities.

D. Alternative Distribution. Sprint may utilize alternative distribution mechanisms to satisfy its obligation to deliver Health Center's Services to the ITFS Receive Sites from the Transmit Site, provided that such use of alternative transport mechanisms does not have a material adverse effect on either the delivery of Health Center's Services to the ITFS Receive Sites or the Health Center's satisfaction of the ITFS minimum transmission requirements for the Channels under FCC rules.

E. Complementary Internet Access Sites. In the event that Sprint utilizes the Leased Excess Capacity (as such term is defined in Section 5.B.) for the provision of a residential two-way high-speed Internet access service, Sprint, at no cost to Health Center, will make a Standard Internet Access Installation (as such term is defined below) and thereafter during the Term provide entry level two-way high-speed Internet access service at a data rate of no less than 128 kilobits per second to locations that are designated by Health Center and that will use such service in conjunction with courses offered by accredited educational institutions for academic credit (the "Internet Access Receive Sites"). Health Center acknowledges that Sprint is under no obligation to utilize the Leased Excess Capacity for the provision of a residential two-way high-speed Internet access service and that Health Center has no rights under this Section 4.E. unless Sprint is choosing, in its sole discretion, at any given time to provide such a service. Sprint will notify Health Center within thirty (30) days of the date it first provides residential two-way high-speed Internet access service utilizing the Leased Excess Capacity to more than _____ paying subscribers. At any time thereafter during the Term, Health Center may designate up to _____ locations to serve as Internet Access Receive Sites, provided that each such site is, subject to Section 4.B., within both Health Center's FCC-defined protected service area and a circle centered at the Transmit Site and having a 35-mile radius and that each such site can receive and transmit the two-way high-speed Internet access service with a Standard Internet Access Installation. Health Center must obtain and coordinate any required approvals or permits prior to the making of a Standard Internet Access Installation at any Internet Access Receive Site. Sprint will install the equipment comprising a Standard Internet Access Installation within ninety (90) days after the date Health Center certifies to Sprint and provides such other evidence as Sprint reasonably requests that Health Center has obtained all required approvals or permits for the making of the Standard Internet Access Installation at the Internet Access Receive Site. Each "Standard Internet Access Installation" will consist of the installation of one antenna commonly installed within the Sprint System (however, in no event an antenna with a gain of more than 36 dbi, a largest dimension greater than one meter and a mast no greater than thirty (30) feet in height), a transceiver, a cable modem, up to one hundred fifty (150) feet of connecting coaxial cable run through existing, readily-accessible conduit or along floors and walls, and such other miscellaneous equipment as is required (the "Internet Access Receive Site Equipment"). Upon installation, the Internet Access Receive Site Equipment will become the property of Health Center, and Health Center will be solely responsible for all repairs, maintenance and replacement of the Internet Access Receive Site Equipment. At such time as Sprint makes available in the Houston, Texas market a so-called "Affinity

Program", Sprint agrees to make such program available to Health Center upon the same terms as Sprint is offering such program elsewhere in the Houston, Texas market.

SECTION 5. Allocation and Use of Airtime.

A. Health Center's Capacity. The parties acknowledge that Health Center is currently transmitting from the Transmit Site educational and video programming ("Health Center's ITFS Video Programming"), and the parties agree that during the Term and while the Channels are employed to broadcast analog transmissions, (i) Health Center will be allocated one full time 6 MHz channel on Sprint's system seven days a week twenty four hours per day, for its ITFS scheduled programs broadcast from the Transmit Site; and (ii) Sprint will transmit such material as Health Center delivers to Sprint at the Transmit Site for transmission utilizing Health Center's Capacity. Health Center acknowledges that Health Center's use of Health Center's Capacity, as provided herein, will fully utilize all of Health Center's minimum use and recapture time under the FCC's rules applicable to analog ITFS facilities. Health Center recognizes that the shifting of Health Center's ITFS Video Programming onto another channel within Sprint's system and/or the digital compression of Health Center's ITFS Video Programming would improve the spectral efficiency of the system. Therefore Health Center agrees that, subject to compliance by Sprint with Section 4.C.i., throughout the Term Sprint may, at its sole discretion, digitally compress the Channels and/or channel shift or channel load the transmission of the Health Center's ITFS Video Programming onto any MDS or ITFS channels, provided such digital compression and/or shifting or loading will not have a material adverse effect on the ability of Sprint to deliver Health Center's Services to the ITFS Receive Sites from the Transmit Site. Upon digitization as permitted herein, Health Center's Capacity shall equal the lesser of two (2) full time NTSC formatted television signals ("Program Tracks"), or 1.2 MHz (*i.e.*, 5% of the capacity of the Channels).

B. Leased Excess Capacity. Except for Health Center's Capacity, the remaining capacity of the Channels will be reserved for the exclusive use of Sprint (the "Leased Excess Capacity").

C. Use of Health Center's Capacity.

i. Health Center's Capacity will be used for the transmission of video material which satisfies the FCC's minimum educational usage requirements for ITFS licensees engaged in the leasing of excess capacity. The transmissions made by Health Center to the ITFS Receive Sites that are applied against the FCC's minimum educational usage requirements will be referred to as "Health Center's Services" for purposes of this Amended Agreement.

ii. In the event Sprint digitally compresses the Channels, Health Center may, at its sole discretion, transmit one or more additional Program Tracks (the "Additional Program Tracks") from the Transmit Site, provided that: (a) it reduces the compression ratio utilized to digitally compress the Channels such that the Additional Program Tracks and the Program Tracks combined do not

utilize more than twenty-five percent (25%) of the capacity of the Channels; (b) it bears all costs and expenses associated with the delivery of the Additional Program Tracks to the Transmit Site and transmission of the Additional Program Tracks, reimbursing Sprint for all additional costs Sprint incurs; (c) Health Center coordinates with any other MDS or Health Center transmitting from the Transmit Site to assure that the transmission of Additional Program Tracks will not adversely impact their use of the Sprint system, recognizing that technical limitations currently exist which require certain uniformity among all video programming that is transmitted in digitally compressed format over a single channel; (d) Health Center provides Sprint no less than twelve (12) months advance notice of its desire to transmit Additional Program Tracks; and (e) Sprint reasonably determines that Health Center's proposal will not have a material adverse effect upon Sprint or its business, such determination not to be unreasonably conditioned, delayed or withheld.

iii. Sprint will have the right to integrate Health Center's ITFS Video Programming into the overall communications service offered to subscribers without cost to Sprint, unless Health Center reasonably advises Sprint that it may not do so because of copyright or programming license restrictions.

D. Use of Leased Excess Capacity. Sprint may, without the prior consent of Health Center, sublease any portion of the Leased Excess Capacity, provided that the sublessee agrees in writing to be bound by the restrictions of this Section 5.D. and any amounts paid by sublessee to Sprint in consideration of the sublease shall be included in System Adjusted Gross Revenues for purposes of calculating fees pursuant to Section 6. Sprint may, without the prior consent of Health Center, permit any entity that is owned by Sprint, owns Sprint or is owned in common with Sprint (a "Sprint Affiliate") to utilize any portion of the Leased Excess Capacity, provided that the Sprint Affiliate agrees in writing to be bound by the restrictions of this Section 5.D. and any amounts paid to the Sprint Affiliate shall be considered as if paid to Sprint for purposes of calculating System Adjusted Gross Revenues and fees pursuant to Section 6. Nothing in this Agreement shall be construed to create a duty on the part of Sprint to actually transmit any minimum number of hours or programming, except as required by FCC rules and regulations, or to obligate Sprint to obtain or furnish substitute or alternative programming in cases where programming is deemed prohibited by this Section 5.D. Except as provided herein, the Leased Excess Capacity may be used by Sprint for any legal purpose (including, but not limited to, the transmission of one-way or two-way voice, video and/or data services), without any restriction on the substance, format or type of information or signal to be transmitted. To the extent that Sprint elects to use Leased Excess Capacity to transmit a multichannel video programming service, it will only select for transmission over the Channels video programming of a sort which would not serve to place Health Center's reputation in the community in jeopardy and will not transmit "Adult Content" video programming over the Channels. "Adult Content" shall include any motion picture which is rated "R", "X" or "NC-17" by the Motion Picture Association of America or which does not carry an MPAA rating if the motion picture is broadcast unedited and in its original form and any television program which Health Center reasonably determines,

based on MPAA standards, would carry a rating of "R", "X" or "NC-17" were such MPAA standards applied to television programs. Health Center acknowledges that Sprint may not exercise control over the content, communications or postings initiated or made by third parties over the Internet or other computer, data networking or voice systems and that Sprint will not be restricted by this Section in providing Internet, data, video streaming or voice services or otherwise be liable to Health Center for the content, communications or postings initiated or made by third parties over the Internet or other computer, data networking or voice systems.

SECTION 6. Fees.

A. Incentive Payments.

B. Monthly Fee.

i. Monthly Minimum Payment.

ii. Monthly Subscriber Royalty Fee.

(a) System Adjusted Gross Revenue for any given month will equal

(b) System Adjusted Gross Revenue will not include:

C. Payments. The Monthly Fee for a given month must be sent to Health Center at 1515 Holcombe Blvd., Box 157, Houston, Texas 77030-1401, and such address as Health Center designates from time to time by first-class, United States Postal Service mail, no later than thirty (30) days after the last day of the month in question. Incentive Payments must be sent to Health Center at such address by first-class, United States Postal Service mail when due.

D. Proration. If the Term ends on a date other than the last day of a calendar month, then the Monthly Fee for that partial month will be paid on a proportionate basis.

E. Right to Audit. The records and corporate accounts of Sprint pertaining to the Monthly Fees due to Health Center will be available for inspection and audit at Sprint's corporate offices at any time during the term of this Amended Agreement or within ninety (90) days thereafter, during reasonable business hours, by Health Center or its designated certified independent auditor. Health Center will be entitled to only one audit of Sprint's records and accounts during any calendar year and the audit will be limited to the records and accounts of Sprint relevant to the lease of Health Center's Channels for the immediately preceding twelve (12) months, unless an error exceeding ten percent (10%) of the total is found, in which case Sprint's records and accounts of the immediately preceding three (3) years may be audited. Health Center will provide Sprint with thirty (30) business days advance notice of its intent to audit the records and accounts prior to being allowed to do so. All information obtained by Health Center during any audit herein will be maintained by Health Center in strict confidence as if such were Confidential Information (as such term is defined in Section 7.D.). If an error is found in the calculation of Monthly Fees, then Health Center must provide a written report specifying the error to Sprint and Sprint will have thirty (30) days from the date of receipt of the report to verify the discrepancy. Any monies owed to Health Center as a result of the audit must be paid in full within thirty (30) days of verification by Sprint of the discrepancy. If Sprint disputes that any monies are due and owing to Health Center, Sprint will submit the matter to arbitration pursuant to Section 11.C.

F. Subscriber Contracts. Health Center shall not interfere with the right of Sprint or its lawful designee to sell, assign, modify, waive, rescind, terminate, or cancel, in whole or in part, any and all services to or contracts with Sprint's subscribers. In case any such services to or contracts are sold, assigned, rescinded, terminated or canceled, Health Center shall not be entitled to any participation in revenues or claims whatsoever with respect to the unperformed portion of any such contract or to any portion of the sale proceeds with respect to any such sale or assignment of such contracts. Health Center shall in no manner be liable or responsible to Sprint's subscribers.

G. Reimbursements. Where one party is required pursuant to this Amended Agreement to reimburse the other party for costs incurred, such payment will be sent to such address as the party to receive such reimbursement designates from time to time by first-class, United States Postal Service mail, no later than thirty (30) days following receipt of an invoice and such supporting documentation as the party paying the reimbursement reasonably requests.

SECTION 7. Additional Covenants.

A. Maintenance of FCC Authorizations.

i. **Preservation of Authorizations.** During the Term, Health Center must take all actions necessary to secure and preserve the authorizations to use the Channels and to permit Sprint to use capacity thereon pursuant to the terms and conditions of this Amended Agreement. Health Center must obtain and maintain in force all licenses, permits and authorizations required or desired in connection with the use of the Channels pursuant to this Amended Agreement. Health Center acknowledges that Sprint is leasing excess capacity on the specific frequencies assigned to the Channels and that Sprint would suffer a material adverse effect were it denied the ability to utilize those frequencies as provided for herein. Except as set forth in Section 7.A.ii., Health Center will (i) take all necessary steps to renew the licenses for the Channels prior to their expiration; and (ii) avoid any act or activity which could reasonably be expected to cause the FCC to impair, restrict, revoke, cancel, suspend or refuse to renew the licenses for one or more of the Channels. Each of the parties hereto must take all reasonable steps to comply with the Communications Act of 1934, as amended, and the rules and regulations of the FCC, and must timely file all reports, schedules and/or forms required by the FCC to be filed by it.

ii. **Cancellation or Non-Renewal.** During the Term of this Amended Agreement, Health Center may return any authorization for the Channels to the FCC for cancellation or elect not to renew any such authorization, provided that it gives one hundred eighty (180) days prior written notice to Sprint of its intent to do so. Upon written request of Sprint, Health Center will assign at no cost such authorizations to such eligible entity as Sprint designates during such one hundred eighty (180) day period that is willing to assume all remaining obligations and benefits of such authorizations, subject to FCC consent. Health Center will promptly and diligently prepare and file, and expeditiously prosecute any necessary assignment application and take all such actions and give all such notices as may be required or requested by the FCC or as may be appropriate in any effort to expedite the authorization of such assignment. Until such time as the FCC issues a Final Order (as such term is defined in Section 11.R.) disposing of the assignment application, Health Center will not take any action that would jeopardize Sprint's rights under this Amended Agreement. In the event any person petitions the FCC to deny the assignment application or otherwise opposes the assignment application before the FCC, or in the event the FCC enters an order granting the assignment application and any person petitions for reconsideration or review of such order before the FCC or appeals or applies for review in any judicial proceeding, then Health Center will oppose such petition before the FCC or defend such order of the FCC diligently and in absolute good faith, at Sprint's reasonable cost and expense, to the end that the assignment contemplated by this Section 7.A.ii. may be finally consummated.

iii. **Assignment of Authorizations.** Health Center may assign any of its authorizations for the Channels to any third party pursuant to the following provisions:

(a) Subject to the receipt of all necessary consents, including the consent of the FCC, Health Center may assign all of its authorizations for the Channels to a third party Health Center eligible to hold such authorizations provided that prior to such assignment Health Center agrees in writing to assign all of its rights and obligations under this Amended Agreement and such third party agrees in writing to assume all of Health Center's rights and obligations. Such written assignment and assumption must be provided to Sprint no less than ninety (90) days prior to the consummation of the proposed authorization assignment(s) and must be in form reasonably satisfactory to Sprint.

(b) Health Center acknowledges that Sprint contemplates making substantial investments in reliance on having use of the Channels pursuant to this Amended Agreement for the entire Term. Therefore, to the extent such a restriction is permitted by the FCC, Health Center will not assign its authorizations for the Channels to a third party who does not agree to assume the rights and obligations of Health Center under this Amended Agreement without first affording Sprint the exclusive right to match, either directly (if Sprint is then eligible to hold the authorizations) or indirectly (through a person eligible to hold the authorizations who agrees to assume the rights and obligations of Health Center hereunder), the material terms and conditions of any bona fide offer to acquire the authorizations (the "Assignment Right of First Refusal").

(1) If Health Center desires to assign the authorizations for the Channels to a third party that does not agree to assume the obligations of Health Center under this Amended Agreement, it must provide Sprint at least one hundred eighty (180) days written notice of its intent to do so, identifying the person to whom the proposed assignment is to be made, describing all of the material terms and conditions of the proposed assignment, and representing its intent to consummate the assignment in the event that neither Sprint, if it is eligible to hold the authorizations, nor a third party selected by Sprint that is eligible to hold the authorizations and is willing to assume the obligations of Health Center hereunder, elects to match the offer on substantially the same material terms and conditions as those contained in the notice (the "Assignment Offer Notice"). Health Center will not accept any offer to acquire the authorizations that includes terms or conditions that have the purpose or the effect of preventing Sprint from exercising its Assignment Right of First Refusal. Sprint will have a period of _____ after its receipt of an Assignment Offer

Notice from Health Center in which to elect, by giving written notice (the "Assignment Offer Acceptance") to Health Center, to directly or indirectly through a third party eligible to hold an ITFS authorization enter into an agreement on the same terms and conditions (except as provided in Section 7.A.iii.(b.)(3.)) as contained in the Assignment Offer Notice. If Sprint does not give an Assignment Offer Acceptance within the requisite day period, Health Center may enter into an agreement with such third party upon the terms and conditions set forth in the Assignment Offer Notice.

(2) In the event that Sprint does not exercise its Assignment Right of First Refusal with respect to any assignment agreement, and any material term of such assignment agreement is subsequently changed, before agreeing to such changed assignment agreement, Health Center must follow the procedures specified in the foregoing subsections, providing Sprint with notice regarding the revised offer and giving Sprint the opportunity to exercise its Assignment Right of First Refusal with regard thereto.

(3) If the Assignment Offer Notice provides that any consideration is to be paid by the third person in whole or in part in a form other than cash, the provisions of Section 11.O.iv. will apply as if the Lease Offer Notice and Lease Offer Acceptance referenced in that Section were an Assignment Offer Notice and Assignment Offer Acceptance.

(4) Health Center must promptly and diligently prepare and file, and expeditiously prosecute any necessary assignment application and take all such actions and give all such notices as may be required or requested by the FCC or as may be appropriate in any effort to expedite the authorization of assignments to Sprint or to a third party selected by Sprint pursuant to the Assignment Right of First Refusal. Until such time as the FCC issues a Final Order disposing of the assignment application, Health Center may not take any action that would jeopardize Sprint's rights under this Amended Agreement. In the event any person petitions the FCC to deny the assignment application to Sprint or to a third party selected by Sprint or otherwise opposes such application before the FCC, or in the event the FCC enters an order granting such application and any person petitions for reconsideration or review of such order before the FCC or appeals or applies for review in any judicial proceeding, then Health Center must oppose such petition before the FCC or defend such order of the FCC diligently and in absolute good faith, at Sprint's reasonable cost and expense, to the end that such assignment may be finally consummated.

(c) The parties acknowledge that the provisions of Section 7.A.iii.(b.) may not be consistent with FCC policy and therefore agree that, if the provisions of that Section are deemed unenforceable and Health Center does not voluntarily provide Sprint with the Assignment Right of First Refusal (despite the fact that its obligation to do so hereunder has been deemed unenforceable), Health Center may not assign its authorizations for the Channels to a third party who does not agree to assume Health Center's rights and obligations under this Amended Agreement without paying to Sprint an amount in cash equal to any and all damages of whatever kind or nature Sprint will suffer by virtue of having diminished access to channel capacity and increased competition (including all costs of redesigning its system, securing FCC consent to such redesign, implementing such redesign, and all future lost profits for the remainder of the Term).

B. Coordination Documents. Health Center acknowledges that the ability of the facilities utilizing the Channels to withstand interference, the design of those facilities and the coordination of that design with the design of other facilities licensed to or leased by Sprint is essential to the success of Sprint's business plans. Therefore, unless requested by Sprint pursuant to Section 3.C., Health Center will not execute or otherwise become a party to any Coordination Document.

C. Modification of Facilities. Health Center acknowledges that the use of the specific frequencies assigned to the Channels, the design of the facilities utilizing the Channels and the coordination of that design with the design of other facilities licensed to or leased by Sprint is essential to the success of Sprint's business plans. Therefore, unless requested by Sprint pursuant to Section 3.A., Health Center will not apply to the FCC for authority to add new facilities or to modify any facilities that utilize the Channels without obtaining the prior written consent from Sprint, which will not be unreasonably withheld, conditioned or delayed.

D. Confidentiality. Health Center acknowledges that there may be made available to it pursuant to this Amended Agreement proprietary information and certain business and marketing techniques, services of Sprint and matters relating to the encoding and/or decoding system associated with the equipment for the Channels and its patented processes, including, but not limited to, improvements, innovations, adaptations, inventions, results or experimentation, processes and methods, whether or not deemed patentable (all herein referred to as "Confidential Information"). Health Center acknowledges that this Confidential Information has been developed by Sprint at considerable effort and expense and represents special, unique and valuable proprietary assets of Sprint, the value of which may be destroyed by unauthorized dissemination. Sprint shall clearly identify at the time of delivery to Health Center all information that Sprint considers "Confidential Information." If such information was given orally, then within thirty (30) days such information shall be reduced to writing and marked "Confidential." Confidential Information shall not include information which (i) is or becomes generally available to the public, other than as a result of an unauthorized

disclosure by Health Center or any of its employees, representatives or agents, (ii) was available to Health Center on a non-confidential basis prior to its disclosure to Health Center, or (iii) becomes available to Health Center on a non-confidential basis from a source other than Sprint or Sprint's representatives, provided that such source is not bound by a confidentiality agreement with Sprint or is not otherwise prohibited from transmitting the information to Health Center. Accordingly, Health Center covenants and agrees that, except as may be required for the performance of this Amended Agreement, or compliance with any applicable law, neither it nor any of its employees, representatives, agents or affiliates shall disclose such Confidential Information to any third person, firm, corporation or other entity for any reason whatsoever, said undertaking to be enforceable by injunctive or other equitable relief to prevent any violation or threatened violation thereof. In the event that Health Center receives a request for the disclosure of confidential information in accordance with the Texas Public Information Act, Chapter 552, Texas Government Code (the "Texas Act") or other provision of applicable law, Health Center shall promptly notify Sprint of such request. Health Center shall cooperate with Sprint, at Sprint's sole cost and expense, in protecting such information from disclosure in accordance with the procedures established by the Texas Act or other applicable law; however, a disclosure made in compliance with the Texas Act or other applicable law shall not be deemed to be a violation of this Amended Agreement. It is agreed that Health Center's obligation under this Article shall be to use its reasonable efforts to inform its employees, representatives, agents and affiliates of the confidentiality obligations imposed by this Article and to assist Sprint at Sprint's expenses in any action at law or in equity to protect Sprint's confidential information. Health Center shall have no liability to Sprint for the actions of any employee, representative, agent or affiliate, if Health Center has complied with its obligations as set forth in the previous sentence and has not specifically authored a disclosure of confidential information in violation of this section. Notwithstanding the foregoing, Health Center shall comply with any disclosure rulings made by the Texas Attorney General on public information requests regardless of whether said information would constitute Confidential Information.

E. Cooperation. Health Center will, within five (5) business days of receipt, provide Sprint with copies of all correspondence, authorizations, forms or other documentation of any sort received from the FCC or any third party relating to the Channels or Health Center's status as an Health Center and all correspondence, forms, applications or other submissions by Health Center to the FCC, date-stamped by the FCC to evidence receipt. Health Center and Sprint must promptly notify each other of any event of which it has knowledge that may affect any of the authorizations relating to the Channels or Health Center's status as an Health Center.

F. Further Efforts. The parties must utilize their best efforts to take such further action and execute such further applications, documents, assurances and certificates as either party may reasonably request of the other in order to effectuate the purpose of this Amended Agreement. In addition, each party agrees that it will not take any action which would adversely affect the rights granted by it to the other party hereunder.

G. Insurance.

i. **Policies Required.** At its expense, Sprint will secure and maintain with financially reputable insurers not less than the following insurance: (a) "All Risk" property insurance covering the Provided Transmission Equipment and STL Equipment for its full replacement value, (b) Commercial General Liability insurance covering liability resulting from Sprint's operation of the Provided Transmission Equipment and STL Equipment with limits of not less than combined single limit per occurrence for bodily injury and property damage liability and annual aggregate, and (c) Workers' Compensation, Business Auto liability and other insurance as required by law.

ii. **Insurance Policy Forms.** Health Center must be named as an additional insured or loss payee, as appropriate, on the above referenced insurance (except Workers' Compensation). Such insurance must be primary to any coverage which Health Center carries.

iii. **Proof of Insurance.** A certificate of insurance must be delivered to Health Center evidencing that the above coverage is in effect and will not be canceled or materially altered without first giving Health Center thirty (30) days' prior written notice. Renewal certificates must be delivered prior to the expiration of the term thereof.

iv. **Waiver of Subrogation.** Anything in this Amended Agreement to the contrary notwithstanding, neither Health Center nor Sprint will be liable to the other or to any insurance company insuring the other party (by way of subrogation or otherwise) for any loss or damage to any structure, building, equipment or other tangible property, or any resulting loss of income, even though such damage or loss might have been occasioned by the negligence of Health Center or Sprint or any of their agents or employees, if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage, was required of such party to be covered by insurance pursuant to this Amended Agreement or is the type of insurance customarily carried by a reasonably prudent party under circumstances which are similar to the transaction described in this Amended Agreement. This waiver covers deductibles as well, *i.e.*, the insured party is liable for any and all deductibles in its insurance policies and it will not be entitled to any payment or reimbursement thereof.

H. Prevention of Unauthorized Reception. Upon the request of Sprint, Health Center will take such actions as Sprint reasonably requests to assist Sprint in preventing the unauthorized reception of transmissions over the Channels. Sprint will reimburse Health Center for all costs reasonably incurred in connection with Health Center's satisfaction of its obligations under this Section.

I. Exclusive Agreement. Health Center recognizes that, during the term of this Amended Agreement, Health Center's cooperation with Sprint is essential to

the success of Sprint's commercial venture, and that such cooperation may be impaired by conflicts of interest. Health Center also recognizes that, during the Term of this Amended Agreement, Health Center will become privy to Confidential Information concerning Sprint's business practices, technology, subscriber growth rates, business plans and other information which, if revealed to a competitor, could be used in a manner harmful to Sprint. Therefore, during the Term Health Center will not, directly or indirectly, acting alone, through an affiliate, or as a member of a partnership or association, or other business entity (i) offer, provide or deliver, utilizing the Channels or any other MDS or ITFS channels, any commercial telecommunications, video, voice, data or internet service within one hundred miles of the Transmit Site (a "Competing Service") or (ii) lease or license any part of Health Center's Capacity to a third party that offers, provides or delivers a Competing Service. Notwithstanding the foregoing, Health Center shall comply with any disclosure rulings made by the Texas Attorney General on public information requests regardless of whether said information would constitute Confidential Information.

SECTION 8. Representations and Warranties.

A. Of Sprint. Sprint hereby represents and warrants to Health Center that:

i. **Organization.** Sprint is duly organized, validly existing and in good standing under the laws of the state or commonwealth of its formation, and has full power and authority to carry out all of the transactions contemplated by this Amended Agreement.

ii. **Authorization; Valid and Binding Amended Agreement.** Sprint has taken all action necessary to authorize the execution and delivery of this Amended Agreement. Upon execution and delivery, this Amended Agreement will constitute a valid and binding agreement of Sprint, enforceable in accordance with its terms.

iii. **No Violation.** Except as disclosed herein, neither the execution and delivery of this Amended Agreement nor the consummation of the transactions contemplated hereby, will constitute a violation of, be in conflict with, or constitute a default under, any term or provision of any agreement governing Sprint's formation or other governing instruments, or any agreement or commitment to which Sprint is bound, or any judgment, decree, order, regulation or rule of any court or governmental authority, or any statute or law. Except for approval of the FCC and state regulatory authorities, no consent of any federal, state or local authority is required in connection with the execution and delivery of this Amended Agreement or with the performance of the transactions contemplated hereby.

iv. **Litigation.** There is no action, suit, proceeding or investigation pending or, to the actual knowledge of Sprint, threatened against

Sprint before any court, administrative agency or other governmental body relating in any way to the transactions contemplated by this Amended Agreement. No unsatisfied judgment, order, writ, injunction, decree or assessment of any court or of any federal, state, local or other governmental department, commission, board, bureau, agency or instrumentality relating in any way to this Amended Agreement or any other agreements, certificates or instruments to be executed and delivered herewith has been entered against and served upon Sprint. There is no action, proceeding or investigation pending or, to the best knowledge of Sprint, threatened against Sprint which questions or challenges the validity of or otherwise seeks to prevent the consummation or performance of this Amended Agreement.

B. Of Health Center. Health Center hereby represents and warrants to Sprint that:

i. **Organization.** Health Center is duly organized, validly existing and in good standing as a state agency under the laws of the state of its formation, and has full power and authority to carry out all of the transactions contemplated by this Amended Agreement.

ii. **Authorization; Valid and Binding Amended Agreement.** Health Center has taken all action necessary to authorize the execution and delivery of this Amended Agreement. Upon execution and delivery, this Amended Agreement will constitute a valid and binding agreement of Health Center, enforceable in accordance with its terms.

iii. **No Violation.** Except as disclosed herein, neither the execution and delivery of this Amended Agreement nor the consummation of the transactions contemplated hereby will constitute a violation of, be in conflict with, or constitute a default under, any term or provision of any agreement governing Health Center's formation or other governing instruments, or any agreement or commitment to which Health Center is bound, or any judgment, decree, order, regulation or rule of any court or governmental authority, or any statute or law. Except for approval of the FCC, no consent of any federal, state or local authority is required in connection with the execution and delivery of this Amended Agreement or with the performance of the transactions contemplated hereby.

iv. **FCC Authorizations.** Set forth as Exhibit D is a true, correct and complete copy of each authorization that the FCC has issued to Health Center to construct and/or to operate ITFS facilities utilizing the Channels (each an "FCC Authorization" and collectively, the "FCC Authorizations"). No application is presently pending before the FCC proposing any modification to any FCC Authorization. Each FCC Authorization was validly issued in accordance with procedures that comply with the FCC's rules and other applicable laws, is issued pursuant to a Final Order, is in full force and effect, and is unimpaired by any act or omission by Health Center. There is no complaint,

inquiry, investigation or proceeding pending before the FCC or, to the best knowledge of Health Center, threatened which could result in the revocation, modification, restriction, cancellation, termination, non-renewal or other action adversely affecting any FCC Authorization and Health Center knows of no facts that, if brought to the attention of the FCC, could result in the revocation, modification, restriction, cancellation, termination, non-renewal or other action adversely affecting any FCC Authorization. Health Center has not entered into any agreement to permit any third party to utilize, whether or not for compensation, any portion of the capacity of the Channels.

v. **Interference Issues.** No FCC Authorization was issued based upon the consent of any other party to the proposed facilities, and no facility authorized under an FCC Authorization is required to utilize or comply with any particular technical parameters (including to utilize carrier offset) as a result of any agreement with any third party. Except for agreements to which Sprint is a party, Health Center has not entered into any agreement which requires or could require any current or future facilities that operate on the Channels to utilize or comply with any particular technical parameters, to cease operation, to limit the hours of operation, or to accept interference. Except for Coordination Documents to which Sprint is a party, Health Center has not provided any Coordination Document to any third party or the FCC pursuant to which Health Center agreed to accept any interference from any other party.

vi. **Litigation.** There is no action, suit, proceeding or investigation pending or, to the actual knowledge of Health Center, threatened against Health Center before any court, administrative agency or other governmental body relating in any way to the transactions contemplated by this Amended Agreement. No unsatisfied judgment, order, writ, injunction, decree or assessment of any court or of any federal, state, local or other governmental department, commission, board, bureau, agency or instrumentality relating in any way to this Amended Agreement or any other agreements, certificates or instruments to be executed and delivered herewith has been entered against and served upon Health Center. There is no action, proceeding or investigation pending or, to the best knowledge of Health Center, threatened against Health Center which questions or challenges the validity of or otherwise seeks to prevent the consummation or performance of this Amended Agreement.

C. Survival of Representations and Warranties. The representations and warranties contained in this Amended Agreement will be deemed to be continuing during the Term of this Amended Agreement, and each party has the duty promptly to notify the other of any event or circumstance which might reasonably be deemed to constitute a breach of or lead to a breach of its warranties or representations.

SECTION 9. Indemnification.

A. By Health Center. To the extent permitted by law, including, without limitation, the Texas Constitution and Texas law generally, Health Center hereby covenants and agrees to, and does hereby, indemnify, defend and save harmless Sprint, its directors, officers, shareholders, employees and agents (the "Sprint Indemnities") from and against and shall reimburse any Sprint Indemnitee on demand for any and all liabilities, losses, damages, claims, demands, actions, costs and expenses (including, without limitations, reasonable court costs and attorneys' fees) of whatsoever kind or nature, which any of the Sprint Indemnities may suffer, sustain, incur, pay, expend or lay out by reason, by virtue or as a result of (i) each and every breach or default by Health Center of any of its covenants, agreements, duties or obligations hereunder, (ii) each and every breach or default of, or inaccuracy or omission in, any representation or warranty of Health Center contained herein, or (iii) any of the acts, omissions, negligence or willful misconduct of Health Center in connection with the performance of this Amended Agreement. Moreover, to the extent authorized by the Constitution and the laws of the State of Texas, Health Center will forever protect, save, defend and keep the Sprint Indemnities harmless and indemnify them against: (i) any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities resulting from claims of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name, service mark or any other claimed harm or unlawfulness arising from the selection and transmission of any programming by Health Center; (ii) claims arising as a result of selection and transmission by any Health Center of programming or other material that is obscene, indecent, profane, or defamatory under 18 U.S.C. Sec. 1464, as it may be amended from time to time, or under any other federal statute, regulation or rule, or which is obscene, indecent, profane or defamatory under the laws of the state in which the Transmit Site is located.

B. By Sprint. To the extent permitted by law, Sprint hereby covenants and agrees to, and does hereby, indemnify, defend and save harmless Health Center, its officers, employees and agents (the "ITFS Indemnities") from and against and will reimburse any ITFS Indemnitee on demand for any and all liabilities, losses, damages, claims, demands, actions, costs and expenses (including, without limitations, reasonable court costs and attorneys' fees) of whatsoever kind or nature, which any of the ITFS Indemnities may suffer, sustain, incur, pay, expend or lay out by reason, by virtue or as a result of (i) each and every breach or default by Sprint of any of its covenants, agreements, duties or obligations hereunder, (ii) each and every breach or default of, or inaccuracy or omission in, any representation or warranty of Sprint contained herein, or (iii) any of the acts, omissions, negligence or willful misconduct of Sprint in connection with the performance of this Amended Agreement. Moreover, Sprint will forever protect, save, defend and keep the ITFS Indemnities harmless and indemnify them against: (i) any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities resulting from claims of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name, service mark or any other claimed harm or unlawfulness arising from the selection and transmission of any information by Sprint; (ii) claims arising as a result of any selection and transmission by Sprint of programming or other material that is obscene, indecent, profane, or defamatory under 18 U.S.C. Sec. 1464, as it may be

amended from time to time, or under any other federal statute, regulation or rule, or which is obscene, indecent, profane or defamatory under the laws of the state in which the Transmission Site is located.

C. Claims for Indemnification. Where indemnification under this Section is sought by a party (the "Claiming Party"): (a) it must notify in writing the other party (the "Indemnifying Party") promptly of any claim or litigation or threatened claim to which the indemnification relates; (b) upon the Indemnifying Party's written acknowledgment of its obligation to indemnify in such instance, in form and substance satisfactory to the Claiming Party, the Claiming Party will afford the Indemnifying Party an opportunity to participate in and, at the option of the Indemnifying Party, control, compromise, settle, defend or otherwise resolve the claim or litigation (and the Claiming Party may not effect any such compromise or settlement without prior written consent of the Indemnifying Party); and (c) the Claiming Party will cooperate with the Indemnifying Party in its above-described participation in any compromise, settlement, defense or resolution of such claim or litigation. In the event that the Indemnifying Party does not so acknowledge its indemnification responsibility, the Claiming Party may proceed directly to enforce its indemnification rights. Health Center's participation in any litigation arising out of this Amended Agreement as a Claiming Party shall be subject to the statutory duties of the Texas Attorney General.

D. Survival. The agreements of indemnification set forth in this Section will remain in full force and effect for a period of one (1) year following the termination or expiration of the Term unless, during such one (1) year period, a Claiming Party makes a claim against an Indemnifying Party pursuant to Section 9.C., in which event such claim will continue to be governed by the provisions of this Section 9 until a resolution of such claim has been completed with all applicable appeal periods having expired.

SECTION 10. Termination or Expiration.

A. Termination by Reason of Default. A party may terminate this Amended Agreement upon thirty (30) days written notice to the other party if the other party is in default and fails within such thirty (30) day period to cure such default; provided, however, if such default is not reasonably capable of being cured within such thirty (30) day period, this Amended Agreement may not be terminated so long as the party in default commences action to cure such default within said thirty (30) day period and thereafter diligently pursues such cure to completion. A party will be deemed to be in default under this Amended Agreement if it fails to comply with any material obligation, term or covenant of this Amended Agreement or if it breaches any material representation or warranty.

B. Termination of FCC Authorization. This Amended Agreement will terminate upon the issuance by the FCC of a Final Order terminating Health Center's authority to utilize or lease the Channels.

C. Effect of Termination. Except as provided in Sections 1, 6.E., 7.D., and 11.O., upon expiration of the Term or in the event of the termination of this Amended Agreement, this Amended Agreement will no longer have any effect in establishing the rights and obligations of the parties hereto. Termination of this Amended Agreement pursuant to Section 10.A. will not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of any default leading to such termination. Termination pursuant to Section 10.B. will be without liability to either Health Center or Sprint, unless such termination results from a default by a party under this Amended Agreement, in which case such termination will not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of such default.

SECTION 11. Miscellaneous.

A. Assignment of Agreement. Sprint and Health Center each has the absolute right to assign its rights and obligations under this Amended Agreement, provided that the party making the assignment gives written notice to the other party, that the assignee agrees in writing to assume all of the duties and obligations of the assignor under this Amended Agreement, and that, in the case of an assignment by Health Center, the proposed assignee acquires Health Center's authorizations for the Channels and the provisions of Section 7.A.iii. are complied with. Sprint may assign, pledge, hypothecate or grant a security interest in its rights under this Amended Agreement as collateral or security for any financing arrangements it makes. Sprint may also grant a security interest in any of the Provided Transmission Equipment and STL Equipment as collateral or security for any financing arrangement it makes; provided, however, that any security interest in any of the Provided Transmission Equipment or STL Equipment shall be made subject to the provisions of this Amended Agreement.

B. Counterparts. This Amended Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

C. Dispute Resolution Through Mediation

i. Dispute Resolution. The parties must utilize good faith efforts to resolve any disputes arising out of or relating to the negotiation, execution, interpretation, performance or nonperformance of this Amended Agreement through amicable settlement discussions to be commenced by the giving of a written notice of dispute by the party claiming to be aggrieved. The notice of dispute must state with specificity the matters in dispute, the position of the party giving the notice of dispute and the rationale for that position. If the parties fail to resolve the dispute by amicable settlement within five (5) business days from the date the notice of dispute is given, either party may then request the settlement of such dispute through mediation in the city and state in which the Transmit Site is located.

ii. **Preservation of Status Quo.** The parties must utilize commercially reasonable efforts to preserve the *status quo* between written notice of dispute and the settlement of the dispute. However, Health Center acknowledges the complexity of the system development Sprint intends to undertake, the practical necessity of coordinating among numerous MDS and Health Centers the execution and filing of applications and Coordination Documents, and the potential adverse impact under the FCC's rules and policies should the filing of such documents be delayed. In light of these and other considerations, the parties agree that time is of the essence with respect to requests by Sprint for Health Center to complete and file any application submitted to it pursuant to Sections 3.A. or 3.B., to execute any Coordination Document submitted to it pursuant to Section 3.C., or to complete and file any notice or notification submitted to it pursuant to Section 3.F. If Health Center believes that grant of an application submitted by Sprint pursuant to Section 3.A. or 3.B., that facilities contemplated by any Coordination Document submitted to it pursuant to Section 3.C., or that facilities installed or modified pursuant to Section 3.F. would have a material adverse effect on the ability of Sprint to deliver Health Center's Services to the ITFS Receive Sites from the Transmit Site, Health Center's sole remedy is to give a written notice of dispute pursuant to Section 11.C.i. within thirty (30) days of Sprint's submission to it and, if the parties are unable to settle the dispute amicably within five (5) business days, either may commence mediation pursuant to Section 11.C.i. In order to assure Health Center ample opportunity to review any application, Coordination Document, notification or other document submitted to it by Sprint, the execution by Health Center of an application, Coordination Document, notification or other document submitted by Sprint pursuant to Section 3.A., 3.B., 3.C., or 3.F. prior to the expiration of such thirty (30) day period will be without prejudice to Health Center's right to give a written notice of dispute and commence mediation within the deadlines set forth in this Section as to whether the facilities in issue would have a material adverse effect on the ability of Sprint to deliver Health Center's Services to the ITFS Receive Sites from the Transmit Site. Notwithstanding the first sentence of Section 11.C.ii., while any such dispute is pending, (i) Health Center must, if it has not already done so, complete and file the application, execute the Coordination Document, or complete and submit the notice or notification, as the case may be, as requested by Sprint; and (ii) Health Center must refrain from withdrawing or failing to prosecute any application or renouncing any Coordination Document or otherwise jeopardizing FCC authorization of the contemplated facilities, and must utilize good faith efforts to prosecute the application to grant. In order to assure that Health Center not suffer any material adverse effect during the pendency of any mediation, (i) should any facilities contemplated by any application or Coordination Document be authorized by the FCC while any dispute is pending, Sprint agrees that any such facilities will not be placed into operation unless and until the dispute is resolved favorably to Sprint; (ii) Sprint will not place into operation any facilities that are permitted by the FCC without prior authorization if Sprint receives the notice of dispute prior to doing

so; (iii) Health Center will not be required to consummate any disputed channel swap unless and until the dispute is resolved favorably to Sprint; and (iv) Sprint will cease utilizing facilities installed pursuant to Section 3.F. or will return facilities modified pursuant to such Section to their prior configuration if the dispute is resolved unfavorably to Sprint.

iii. **Cooperation.** The parties must facilitate the mediation by (i) making extraction, all documents, books, records and personnel under their control if relevant to the dispute and not otherwise privileged from disclosure, subject to written agreement to hold all Confidential Information so disclosed in confidence, and (ii) observing strictly any time periods for submission of evidence or briefs. The parties acknowledge and agree that time is of the essence in resolving any dispute hereunder.

D. Entire Agreement. This Amended Agreement constitutes the entire agreement between the parties and supersedes the Existing Agreement and all prior oral or written contracts or agreements of any kind. The parties further agree that this Amended Agreement may only be modified by a written agreement signed by both parties.

E. Force Majeure. If by reason of act of God, acts of public enemies, orders of any branch of the government of the United States of America, any state or any political subdivision thereof which are not the result of a breach of or default under this Amended Agreement, orders of any military authority, insurrections, riots, epidemics, fires, civil disturbances, explosions, or any other similar cause or event not reasonably within the control of the adversely affected party, either party is unable in whole or in part to perform its obligations hereunder, such party so unable to perform will not be deemed in violation or default of this Amended Agreement during the period of such inability and the other party shall be excused from performance of its obligations hereunder during such period of inability. If the period of inability extends beyond one hundred eighty (180) days, the party that is able to perform its obligations may terminate this Amended Agreement without liability by written notice to the other party within fifteen (15) days following the expiration of such one hundred eighty (180) day period.

F. Headings. The headings contained in this Amended Agreement are for convenience of reference only and do not affect in any way the meaning or interpretations of this Amended Agreement.

G. Governing Law. This Amended Agreement is governed by and is to be construed and enforced in accordance with the Communications Act of 1934, as amended, the FCC's rules, and the laws of the state of Texas.

H. Interpretation. In the event that this Amended Agreement requires interpretation or construction, this Amended Agreement will not be interpreted or construed more strictly against any one party by reason of any rule of interpretation or

construction under which a document is to be construed more strictly against the drafting party.

I. Jurisdiction and Venue. Subject to the provisions of Section 11.C., any suit brought with respect to this Amended Agreement must be brought in the state or federal courts in Houston, Harris County, Texas. For any and all such purposes, the parties hereto hereby irrevocably submit to the jurisdiction of such courts, waive all objections thereto (on the grounds of improper venue, forum non conveniens or otherwise), and agree that service of process upon each as provided in Section 11.K. will be effective to establish personal jurisdiction over it in such courts.

J. Licensee Control. Notwithstanding any other provisions of this Amended Agreement, Health Center will at all times retain such ultimate and exclusive responsibility for the operation and control of the facilities licensed to it as is required by the FCC's rules.

K. Notice. Except for payments pursuant to Sections 6.C. and 6.F., all notices and other communications given or made pursuant to this Amended Agreement must be in writing and will be deemed received as of the first weekday (excluding Federal holidays) after being sent for next-day delivery by United States Postal Service Certified or Express Mail, return receipt requested, or by Federal Express, signature required, to the other party at the following address:

i. If to Health Center:

Lawrence Jones, Director of Telehealth Services
The University of Texas M. D. Anderson Cancer Center
1515 Holcombe Blvd., Box 182
Houston, Texas 77030-4009
Tel: 713 792 5520
Fax: 713 792 4924

And

Richard L. Miller
VP, Information Services
UT Health Science Center - Houston
PO Box 20036
Houston, Texas 77030
Tel: 713-500-2278
Fax: 713-500-2211

with a copy to:

Chief Legal Officer
The University of Texas M. D. Anderson Cancer Center
Legal Services – Box 537
1515 Holcombe Blvd.
Houston, Texas 77030

ii. If to Sprint:

People's Choice TV of Houston, Inc.
c/o Sprint Corporation
Attn: Mr. Todd Rowley
6450 Sprint Parkway
Overland Park, KS 66251

with a copy to:

Sprint Corporation
Attn: ITFS/MDS Leasing
4900 Main Street, 11th Floor
Kansas City, MO 64112

B. Payment of Expenses. Except as otherwise provided, Health Center and Sprint will each pay its own costs and expenses incident to negotiating and fulfilling its obligations under this Amended Agreement.

C. Reformation and Severability. If any provision of this Amended Agreement is determined by any court, the FCC or any other governmental authority to be invalid, illegal or incapable of being enforced, all other provisions will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon any determination that any provision is invalid, illegal or incapable of being enforced, or should Congress, the FCC or any other government authority adopt any new or modified law, rule or public policy such that any provision of this Amended Agreement would be invalid, illegal, incapable of being enforced, or incapable of being performed without a material adverse effect upon the party responsible for such performance, the parties hereto will negotiate expeditiously and in good faith to modify this Amended Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the maximum extent possible. If the parties are unable to negotiate a modification of this Amended Agreement under such circumstances, this Amended Agreement may be terminated by the party that would suffer a material adverse effect as a result.

D. Relationship of the Parties. Health Center and Sprint acknowledge and agree that by the provisions of this Amended Agreement they are entering into an airtime lease relationship and not a joint venture. Both parties will

with notice regarding the revised offer and giving Sprint the opportunity to exercise its Right of First Refusal with regard thereto

iv. If the Lease Offer Notice provides that any consideration is to be paid by the third person in whole or in part in a form other than cash, Sprint may, in its sole discretion, elect to substitute, in whole or in part, for such non-cash consideration an amount in cash fairly equivalent to the fair market value of the non-cash consideration payable by the third person. The Lease Offer Acceptance must specify the amount of any such substitute cash consideration and the non-cash consideration for which it is intended to substitute. If Health Center disputes that the substitute cash consideration specified by Sprint is in an amount fairly equivalent to the fair value of the non-cash consideration payable by the third person, Health Center must within _____ after receipt of the Lease Offer Acceptance provide Sprint with a written notice specifying the amount it considers to be fairly equivalent to the fair value of the non-cash consideration payable by the third person (the "Lease Counter-Offer"). The question of the fair value of the non-cash consideration will be referred to the American Arbitration Association pursuant to Section 11.C. unless Sprint gives Health Center written notice within _____ after its receipt of the Lease Counter-Offer that it agrees to enter into an agreement containing the fair value set forth in the Lease Counter-Offer. In the event the question of the fair value of the non-cash consideration is referred to the American Arbitration Association, Health Center will not enter into any agreement with the third party until _____ after determination by the arbitrator. Upon such determination, Sprint will have the option of agreeing to enter into an agreement containing the fair value determined by the arbitrator by giving written notice of such election to Health Center within _____ of the arbitrator's determination.

F. Specific Performance. Each of the parties acknowledges and agrees that the rights reserved to the other are of a special, unique, unusual and extraordinary character, which gives them peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in an action at law and the breach by either party of any of the provisions hereof (other than provisions calling for the payment of money) will cause the other irreparable damage and injury. In such event, the non-defaulting party will be entitled, as a matter of right, without further notice, to require of the other party specific performance of all of the acts, services and undertakings required under this Amended Agreement, including the obtaining of all requisite authorizations to execute or perform this Amended Agreement and to obtain injunctive and other equitable relief in any court of competent jurisdiction to prevent the violation or threatened violation of any of the provisions hereof. Neither this provision nor any exercise by any party of rights to equitable relief or a specific performance herein granted will constitute a waiver of any other rights which the non-defaulting party may have to damages or otherwise.

G. Waiver. No failure or delay on the part of any party hereto in the exercise of any right hereunder will impair such right or be construed to be a waiver of, or


acquiescence in, any breach of any representation, warranty or covenant or other obligation herein. The express or implied waiver by either party of any breach of any representation or warranty or any failure to fulfill any covenant or other obligation under this Amended Agreement will not constitute a waiver of any other representation or warranty or of any other failure in the future or in the past by the other party to fulfill such representation, warranty, covenant, or obligation hereunder.

H. Word Meanings. As used in this Amended Agreement, the term "including" is deemed to mean "including, without limiting the generality of the foregoing." A "Final Order" means an order of the FCC which is effective, which is not subject to any petition for reconsideration, petition to deny or informal objection, application for review, notice of appeal, petition for writ of *certiorari* or request for stay and the time for any party to seek such relief or for the FCC to grant such relief *sua sponte* has expired. All pronouns and any variations therefor are deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.

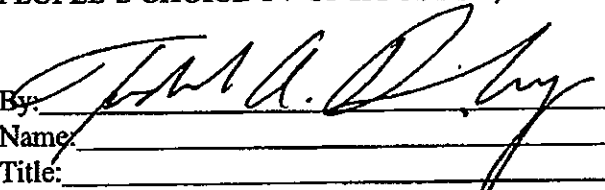
I. Survival of Obligations. All obligations of Sprint or Health Center which by their nature involve performance, in any particular, after the end of the Term, or which cannot be ascertained to have been fully performed until after the end of the Term, will survive the expiration or sooner termination of the Term.

IN WITNESS WHEREOF, the parties hereto have caused this Amended Agreement to be executed by their duly authorized officers as of the Effective Date.

THE UNIVERSITY OF TEXAS HEALTH
SCIENCE CENTER AT HOUSTON

By: 
Name: T. Kevin Dillon
Title: Vice President and Chief Financial Officer

PEOPLE'S CHOICE TV OF HOUSTON, INC.

By: 
Name: _____
Title: _____

REC'D & INSPECTED

NOV 23 2004

FCC-GBG MAILROOM

Houston, TX
C Group
-
WHQ281

SECOND AMENDMENT TO ITFS AIRTIME ROYALTY AGREEMENT

This Second Amendment ("Second Amendment") to the ITFS Airtime Royalty Agreement (the "Agreement") by and between Region IV Service Center ("Lessor") and People's Choice TV of Houston, Inc. ("Lessee") is entered into as of this 17th day of February, 1998 (the "Execution Date").

WHEREAS, on December 19, 1991 Lessor and Lessee entered into the Agreement in connection with Lessee's desire to lease excess capacity on Instructional Television Fixed Service ("ITFS") station WHR492 and WHQ281 (Houston, TX) licensed to Lessor for use in connection with the wireless cable system in the Houston metropolitan area; and

WHEREAS, Lessor and Lessee amended the Agreement on June 30, 1994; and

WHEREAS, on June 30, 1994, Lessor and Lessee entered into a Talk Back Channel Lease; and

WHEREAS, the Lessor and Lessee wish to further amend the Agreement.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the Parties agree as follows:

I. Section 1(a) is deleted and replaced with the following:

"(a) Initial Term. The term of this Agreement shall end on the tenth (10th) anniversary date of the Second Amendment to ITFS Airtime Royalty Agreement ("Second Amendment"). This period shall be referred to as the "Initial Term."

II. Section 2(b) shall be amended by deleting the following words:

"aired between the hours of 7:30 a.m. and 9:00 p.m."

III. Section 2(c) shall be amended by deleting the following words:

"between the hours of 7:00 a.m. and 6:59 a.m."

IV. Section 2(d) shall be amended by replacing Exhibit A with the attached revised Exhibit A which conforms to Lessor's airtime requirements pursuant to the conditions contained within Section 2 of the amended Agreement. In addition, the following shall be added to section 2(d):

"All airtime not used by Lessor shall be considered Excess Airtime available for use by Lessee."

V. Section 2(d)(1) shall be deleted and replaced with the following:

"Maximum Channel Usage.

- (i) Notwithstanding any other language in the Agreement to the contrary (other than the language in Section 2(e)), for the time period that Lessor's Channels are being operated in an analog mode for the term of this Amendment, the following Maximum Channel Usage shall apply: Between the hours of 4:00 a.m. and 7:00 a.m., Monday through Friday of each week, Lessor shall not provide programming on more than One (1) of Lessor's Channels simultaneously; between the hours of 7:00 a.m. and 3:30 p.m., Monday through Friday of each week, Lessor shall not provide programming on more than Three (3) of Lessor's Channels simultaneously; between the hours of 3:30 p.m. and 5:00 p.m., Monday through Friday of each week, Lessor shall not provide programming on more than Two (2) of Lessor's Channels simultaneously; between the hours of 5:00 p.m. and 6:00 p.m., Lessor shall not provide programming on more than One (1) of Lessor's Channels; and on Saturdays, Sundays and Holidays, between the hours of 4:30 a.m. and 7:00 p.m., Lessor shall not provide programming on more than One (1) of Lessor's Channels. Other than Lessor's airtime noted above, and as permitted under 2(e) herein, Lessor shall not transmit over the Channels.
- (ii) Notwithstanding any other language in the Agreement, to the contrary, upon the implementation of digital compression by Lessee on Three (3) or more of Lessor's Channels and Lessee utilizes such capacity created for Lessee's programming, then pursuant to section 2(k) below: (A) Lessor shall have the initial use of Five (5) Programming Tracks; (B) Lessee shall reserve an additional Three (3) Programming Tracks to be made available to Lessor.
- (iii) Under the combination of A and B above, Lessor shall be limited to a total digital signal throughput of 27 megabits per second ("Mbps") combined capacity for Lessor's use; (C) Of these Eight (8) Programming Tracks, Lessee shall pay the costs to upgrade the transmission facilities to convert the Channels to a digital transmission mode for the initial Five (5) Programming Tracks. The costs to implement the sixth through eighth Programming Tracks shall be the responsibility of the Lessor; (D) Any equipment Lessor elects to install for use in operating the Programming Tracks shall be fully compatible with Lessee's system and its design specifications. Lessor shall not attempt to install equipment that requires space in excess of one standard rack. Lessee shall cooperate with

Lessor's efforts to implement any of the additional Programming Tracks. Lessor agrees to provide Lessee with a written schedule illustrating the hours and programs it will air on the first through fifth Programming Tracks for each semester, ninety (90) days in advance of each semester and one hundred eighty (180) days in advance of each semester for programs aired on the sixth through eighth Programming Tracks. Any airtime or capacity that Lessor elects not to use shall automatically become airtime or capacity available for Lessee's use upon Lessee's written notice to Lessor of its desire to utilize such time. Prior to Lessee's use of such capacity or airtime, the parties shall agree on Ready Recapture provisions for Lessor to recapture such capacity or airtime."

VI. Section 2(e) shall be deleted in its entirety and replaced with the following:

"Lessor reserves for its future needs the following rights:

(1) Lessor agrees not to recapture any airtime between the execution date of the Second Amendment and July 31, 1999. If Lessor desires to recapture any airtime between August 1, 1999 and July 31, 2000, and Lessee is operating Lessor's Channels in an analog mode, Lessor shall be limited to recapturing One (1) additional simultaneous Channel between the hours of 7:00 a.m. and 3:30 p.m. weekdays only in addition to the airtime provided for in Section 2(d)(1)(i). Lessor shall give Lessee notice one (1) year prior to the date on which it seeks to recapture such additional Channel. Upon Lessor's election to recapture this One (1) additional simultaneous Channel, then the monthly royalty fee

set forth in Section 6(a) of the Second Amendment. Election I in the Maximum Channel Usage Chart below illustrates the maximum number of Channels and dates on which airtime can be utilized by Lessor under this provision and amounts to be paid by Lessee to Lessor.

(2) If by August 1, 2000, Lessee has not implemented digital compression technology on Three (3) or more of Lessor's Channels and Lessee utilizes such capacity created for Lessee's programming, then between August 1, 2000 and July 31, 2001, Lessor shall have the right to recapture One (1) Channel between the hours of 7:00 a.m. and 7:30 a.m., Monday through Friday; Two (2) Channels simultaneously between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday; and One (1) Channel between the hours of 7:00 a.m. and 11:00 a.m. on Saturdays, Sundays and Holidays, in addition to the airtime provided in Section 2(d)(1)(i). Upon Lessor's election to recapture this One (1) additional simultaneous use Channel, the monthly royalty fee Election II in the Maximum Channel Usage Chart below illustrates the maximum number of Channels and dates on which airtime can be utilized by Lessor under this provision and amounts to be paid by Lessee to Lessor.

(3) If by August 1, 2001, Lessee has not implemented digital compression technology on Three (3) or more of Lessor's Channels and Lessee utilizes such capacity created for Lessee's programming, then between August 1, 2001 and July 31, 2002, Lessor shall have the right to

recapture Two (2) Channels simultaneously between the hours of 7:00 a.m. and 7:30 a.m., Monday through Friday; Two (2) Channels simultaneously between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday; One (1) Channel between the hours of 3:30 p.m. and 5:00 p.m., Monday through Friday; and One (1) Channel between the hours of 7:00 a.m. and 11:00 a.m. on Saturdays, Sundays and Holidays, in addition to the airtime provided in Section 2(d)(1)(i). Upon Lessor's election to recapture this One (1) additional simultaneous use Channel, the monthly royalty fee

Election III in the Maximum Channel Usage Chart below illustrates the maximum number of Channels and dates on which airtime can be utilized by Lessor under this provision and amounts to be paid by Lessee to Lessor.

(4) If Lessor has not recaptured any airtime in excess of Lessor's airtime set forth in Section 2(e) herein by August 1, 2002, Lessor may elect to recapture the maximum channel usage set forth under Election IV in the Maximum Channel Usage Chart at no reduction in the monthly royalty Fee. Election IV provides for Lessor's Maximum Channel Usage as follow: For Mondays through Fridays between the hours of 4:00 a.m. and 7:00 a.m., Lessor shall not transmit over more than One (1) Channel; between the hours of 7:00 a.m. and 3:30 p.m., Lessor shall not transmit over more than Four (4) Channels simultaneously; between the hours of 3:30 p.m. and 5:00 p.m., Lessor shall not transmit over more than Two (2) Channels simultaneously; and between the hour of 5:00 p.m. and 6:00 p.m., Lessor shall not transmit over more than One (1) Channel. On Saturdays and Sundays, between the hours of 4:30 a.m. and 7:00 a.m., Lessor shall not transmit over more than One (1) Channel.

MAXIMUM CHANNEL USAGE CHART

NUMBER OF CHANNELS					
Monday – Friday	Current	Election I	Election II	Election III	Election IV
4:00 a.m. - 7:00 a.m.	1	1	1	1	1
7:00 a.m. - 7:30 a.m.	3	4	5	5	4
7:30 a.m. - 3:30 p.m.	3	4	5	5	4
3:30 p.m. - 5:00 p.m.	2	2	2	3	2
5:00 p.m. - 6:00 p.m.	1	1	1	1	1
Sat./Sun./Holiday					
4:30 a.m. - 7:00 a.m.	1	1	1	1	1
7:00 a.m. - 11:00 a.m.	0	0	1	1	0
Term Period	Second Amendment	8/1/99 - 7/31/00	8/1/00 - 7/31/01	8/1/01 - 7/31/02	8/1/02 - Expiration
Monthly Payment	\$10,000.00	\$8,000.00	\$6,750.00	\$6,000.00	\$10,000.00

In all instances in which Lessor elects to recapture airtime, Lessor shall provide Lessee with a one (1) year advance written notice of the date on which it seeks to recapture such airtime and such notice shall be given no sooner than July 31, 1998, if Lessor elects to exercise its right to recapture any airtime. Lessor agrees to schedule its Recapture Airtime to meet the stipulations of (1), (2), (3) and (4) above and the revised Exhibit A attached hereto. Upon Lessor's use of its Ready Recapture Airtime, Lessee shall provide for its transmission of Lessor's programming over one (1) or more of the Channels or other channels utilized by Lessee in its wireless cable system to assure that Lessor's programming will be received at Lessor's receive sites."

VII. The following shall be added to the beginning of the first sentence of Section 2(f):

"During the period that the Channels are being operated in an analog mode and..."

The following sentence shall be added after the last sentence of Section 2(f):

"Upon conversion of any Channel to digital mode, Lessor's use of the vertical and horizontal blanking intervals, second audio carriers and other such subcarriers shall be limited to the carriage of studio control information within Lessor's Program Track throughput capacity. All other use by Lessor of the subcarriers associated with any Channels which are converted to a digital transmission shall cease."

VIII. Section 2(g) shall be deleted and replaced with the following language:

"Lessor acknowledges that a significant Capital Expenditure is to be made by Lessee for the mutual benefit of the parties to this Agreement. Lessor expressly agrees to use its best efforts to take no action which would jeopardize the ability of Lessee to fully recover its investment through its provision of services contemplated by this Agreement. In this regard, it is acknowledged that Lessor's primary purpose for airtime use is to provide accredited educational programming. In the event that Lessor seeks to broadcast programming other than during Lessor's Primary Airtime or Lessor's Ready Recapture Airtime, thereby reducing Lessee's Excess Capacity Airtime to less than the allocation provided for under the Second Amendment, then Lessor shall provide Lessee with notice of this intent as set forth herein. Any such attempt to reduce Lessee's Excess Capacity Airtime not provided for under this Second Amendment shall hereinafter be referred to as a "Significant Reduction in Lessee's Airtime". No "Significant Reduction in Lessee's Airtime" shall result from the use by Lessor of its Airtime as provided for herein."

IX. Section 2(k) shall be added and shall state the following:

"Lessee shall have the right during the initial term of the Agreement and any Renewal Term thereof to implement digital compression on One (1) or more of Lessor's Channels by giving a sixty (60) day prior written notice to Lessor. The parties agree to fully cooperate for the planning and implementation of digital transmission on the Channels. It is the intention of

the parties to schedule the conversion of the Channels in a manner that will minimize any disruption of Lessor's scheduled transmission to its receive sites. Other than the Lessor's Airtime noted in Section II(d)(1) above, and subject to Section 7 of the Agreement, Lessee shall have the right to use Lessor's Channels for any use authorized under the FCC rules, including but not limited to outbound and/or two way transmission of video, voice and/or data services, utilizing, if desired by Lessee, frequency reuse (i.e., cellularization or sectorization) for transmission and/or reception. For the purposes of this Agreement, the term "Programming Track" shall be defined as a channel capable of providing capacity for one full motion compressed audio/video or data service."

X. Section 3(c) is replaced with the following language:

c) [This section is intentionally omitted.]

XI. The first two sentences of section 4(a) are deleted and replaced with the following language:

"(a) Receive Site Equipment. Lessor currently has a total of one hundred and six (106) Receive Sites, of which the initial seventy-one (71) installed receive sites shall be referred to as the "Charter Receive Sites". The remaining thirty five (35) receive sites currently installed will be referred to as the "New Receive Sites". A revised Exhibit B is attached, identifying each of these Receive Sites and the number of set-top converters installed per Receive Site. Lessee is responsible for maintaining the Standard Installation equipment package for each of the Charter Receive Sites, including one (1) or more TV set-top converters currently installed. Lessee shall not be obligated to maintain the New Receive Sites nor the Site equipment other than the set-top converter/decoder installed. Lessor may elect to have Lessee perform installation and maintenance for the New Receive Sites, and Lessee shall invoice Lessor on a time and material basis, plus a fifteen percent (15%) administrative fee to maintain or install these New Receive Sites (excluding standard converter/decoder maintenance, which is at no charge to Lessor).

Upon implementation of digital technology by Lessee on One (1) or more of Lessor's Channels used to transmit Lessor's programming services, Lessee shall upgrade the Standard Installation of all of Lessor's active Receive Sites with a comparable number of digital converters/decoders per Receive Site. Lessee shall be responsible for the costs associated with upgrading the seventy one (71) Charter Receive Sites and Lessor shall reimburse Lessee for the costs associated with the upgrade of any New Receive Sites. The costs for Lessor to upgrade the New Receive Sites' analog TV set-top converters to a digital converter/decoder shall be calculated per the expense and credit calculation in 4(b) below. Lessee shall insure that Lessor's ITFS signals to each of its Receive Sites in digital mode shall be equal to or exceed the existing analog picture/radio quality as seen by the average viewer."

XII. Section 4(b) shall be deleted and replaced with the following:

"Receive Site Grant. Lessee shall pay Lessor
to compensate Lessor for its expenses incurred in the construction of future receive
sites for reception of Lessor's programming transmitted over Lessee's wireless system.

shall be paid in four equal quarterly payments,
beginning on the first day of the first full month following the execution of this Second
Amendment. Each quarterly payment shall be in the amount

Upon the execution of this Second Amendment and upon Lessor's request, Lessee agrees
to construct up to one hundred fifty (150) receive sites with Standard Installation packages.
Lessor agrees to pay Lessee per receive site for the first
one hundred fifty (150) receive sites. For any non-standard installation at any of the first one
hundred fifty (150) receive sites, Lessor agrees to pay Lessee

plus Lessee's expenses for time and materials associated with such installation. If
requested by Lessor, Lessee agrees to install additional receive sites in excess of the one hundred
fifty (150) and Lessor agrees to pay Lessee for its time and materials plus a fifteen percent
(15%) administrative fee for the installation of each receive site in excess of one hundred fifty
(150). Lessor's payment for the installation or for work performed for these new receive sites
shall be made to Lessee within thirty (30) days of receipt of invoice by Lessor. Other than as
provided for within Sections 4(a) and 19(e) herein, Lessee shall be responsible for maintaining
only the Charter Receive Sites and Lessor shall be responsible for maintaining any additional
receive sites.

As shown in Exhibit B per the Second Amendment, Lessor has a total of one hundred six
(106) Receive Sites. The thirty-five (35) New Receive Sites recently installed are counted as part
of the one hundred fifty (150) receive sites to be installed by Lessee.

The Parties recognize that the current transmission of the analog signal over the Channels
from time to time may be upgraded to newer technology such as digital compression or other
means that create expanded capacity of the Channels as authorized under the FCC Rules. Upon
such an event, it would be necessary to upgrade or replace Lessor's Receive Site's analog set-top
converter/decoder with digital-capable equipment. If Lessee has requested that Lessor amend
its FCC license for the Channels which require a technical modification or upgrade of reception
equipment at Lessor's Receive Sites, in order to accommodate the change on Lessor's
Transmission capacity, then the Parties agree to the following:

- (i) For Lessor's seventy-one (71) Charter Receive Sites, Lessee shall be responsible
to upgrade or modify the Standard Equipment Package as necessary to allow
Lessor's signals to be received. This cost to Lessee shall include the change-out
of each of the respective Charter Receive Sites' set-top converters noted within
Exhibit B attached.

- (ii) For the New Receive Sites which Lessor has previously paid for, that subsequently require an upgrade of the TV set-top converter/decoder (such as a change-out for digital signal reception), Lessor shall be obligated to reimburse Lessee for the difference in the cost of the analog set-top and its digital replacement. That cost shall be determined by applying the original cost of the analog converter less the value representing the converter's then useful equipment life remaining against Lessee's actual cost of the digital converter/decoder installed as a replacement. The original cost for each analog set-top converter is _____; the useful equipment life is sixty (60) months from the time the equipment is installed at Lessor's Receive Site. For each month that the analog converter remains in service, its original value is _____.
- (iii) For any remaining balance of the one hundred fifty (150) New Receive Sites which have not been installed to date, which will require a digital converter/decoder with the Standard Installation, then Lessor's cost of the installation shall be calculated in the following manner:
per installation, plus Lessee's cost of the digital set-top converter/decoder,
credit for the analog converter/decoder being substituted in the Standard Installation)

XIII. Section 4(c) is amended by adding the following language:

"Lessor agrees to allow Lessee, at Lessee's sole discretion, to feed Lessor's Houston ITFS signals to its distant northeastern receive sites from Lessee's Anahuac wireless cable system provided that comparable signal reception can be provided by Lessee to those receive sites."

XIV. Section 6(a)(i) shall be deleted and replaced with the following:

"Beginning on the first day of the first month following the execution of this Second Amendment, Lessee agrees to pay Lessor a monthly Royalty Fee of _____ as complete compensation for Lessee's use of Lessor's Channels under this Second Amendment. This payment shall be made no later than the twentieth (20th) day from the close of the preceding month.

Pursuant to the conditions noted within section 2(e) as amended, the monthly Royalty Fee shall be adjusted as conditions warrant. In the event that Lessee implements digital technology on any of Lessor's Channels, and thereafter maintains and continues to maintain during the term of the Agreement no less than fifty thousand (50,000) Basic Service Subscribers for a period of twenty-four (24) consecutive months, inclusive of the seventh (7th) year of the term of the Second Amendment, then the Royalty Fee paid monthly shall increase for the eighth (8th), ninth (9th) and tenth (10th) year

XV. Section 6(a)(ii) items (a), (b) and (c) shall be deleted and the Parties agree that the advance payments made prior to the Second Amendment shall no longer be required for off-set or repayment by Lessor.

XVI. Section 6(b)(i) shall be deleted and replaced with the following:

"Lessee shall have the right to incorporate a Channel expansion or multiplex technology, such as provided for under Section 2(k) herein, thereby increasing the number of the Channels used pursuant to this Agreement. Lessor shall take all actions in a timely manner that are reasonably requested by Lessee to implement such technology."

XVII. The last sentence of Section 10 is deleted and replaced with the following:

"Lessee shall have the right to assign its rights under the Agreement and the Second Amendment as follows: (A) to any entity that demonstrates that its Net Worth equals or exceeds Lessee's net worth, provided that the Assignee agrees in writing to accept all rights and obligations of Lessee under the Agreement and the Second Amendment and provided that Lessee gives Lessor thirty (30) days prior written notice of such assignment; or (B) Lessee shall have the right to assign its rights under the Agreement and this Second Amendment to any entity affiliated with Lessee without Lessor's consent provided that Lessor remains obligated under this Agreement, or the affiliates net worth is equal to or exceeds Lessee's net worth; or (C) Lessee shall have the right to assign its rights and obligations under the Agreement and this Second Amendment to an unrelated entity that does have a net worth equal to or greater than Lessee only with the Lessor's prior written consent which shall not be unreasonably withheld or unreasonably conditioned. In the event of an assignment, the Assignee shall provide a written notice to Lessor which states that the Assignee agrees to accept all obligations and rights under this Agreement as amended."

XVIII. The Agreement shall be amended by adding the following new Section 19(e):

"(e) Upon Lessee's request, Lessor shall file an application with the FCC to relocate its frequencies in a comparable block of frequencies to those currently licensed to Lessor, provided that (i) the FCC rules allow for such filing; and (ii) Lessor's ability to provide for transmission and reception of its services is of no less signal quality evident to the average TV viewer prior to the migration to the comparable frequencies than at the execution of this agreement; and (iii) any other party required to consent to such filing has consented."

XVIV. The Agreement shall be amended by adding the following new Section 25:

"25. Non-competition.

(a) During the Initial Term and any Renewal Term of this Agreement, to the extent permitted by applicable law or regulation, Lessor agrees not to transmit any material or programming, or to allow any party to offer a service over any of the Channels that are in competition with those provided by Lessee.

Programming directed to Lessor's receive sites of an educational nature, including programming accepted as educational under applicable laws, rules and regulations, shall not be deemed competitive with the services of Lessee. Should this Agreement terminate for any reason, Lessor shall not lease its excess capacity to any competitor of Lessee as long as it remains collocated with or uses Lessee's system facilities.

(b) For as long as this Second Amendment remains in force and Lessor remains the Licensee of the Channels, Lessee agrees not to knowingly transmit any material or permit any material to be transmitted over the Channels that is deemed to have substantially the same content as that programming provided by the Lessor or to be in competition with the programming provided by the Lessor. Educational programming deemed to be in competition with Lessor's services shall be identified for the purpose herein as:

- (i) programming produced and provided for by a State of Texas Regional Educational Service Center ("ESC") other than Lessor;
- (ii) programming specifically of a similar content to that provided by Lessor which is produced or provided by any K-12 school district, community college, other colleges or universities;
- (iii) any educational institutions affiliated with the State of Texas Education Department; and
- (iv) programming of a substantial content that is specifically directed to the type of client base traditionally serviced by Lessor in the field of teacher training or certification, regardless of the entity that produces or provides the programming service."

Notwithstanding the foregoing, Lessor recognizes that Lessee is required by contract to transmit such educational programming on the other ITFS channels in Lessee's wireless cable system as requested by such ITFS licensees. Lessor agrees that this shall not constitute a breach of this agreement".

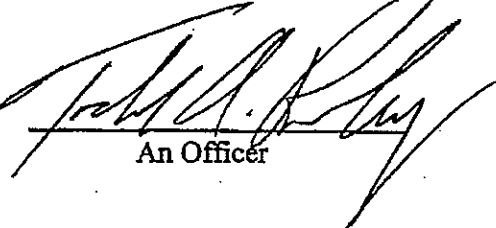
The following page is the signature page.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment
to the Agreement as of the date first above written.

REGION IV EDUCATION SERVICE CENTER

By: 
An Authorized Representative

PEOPLE'S CHOICE TV OF HOUSTON, INC.

By: 
An Officer

REC'D & INSPECTED

JUL 30 2003

FCC-GBG MAILROOM

Houston, TX
D Group
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KRZ68



SPRING BRANCH INDEPENDENT SCHOOL DISTRICT

We are dedicated to providing
every student a quality education in a
safe environment

Director of Telecommunications

John Baugh
baughj@spring-branch.isd.tenet.edu

November 1, 1999

Via Hand Delivery

Magalie R. Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S. W.
Room TW-A325
Washington, D. C. 20554

RECEIVED
NOV 2 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Instructional Television Fixed Service Station KRZ68 (Houston, TX) – FCC File
No. BNPIF-19970718DA

Dear Ms. Salas:

On behalf of Spring Branch Independent School District, licensee of Instructional Television Fixed Service station KRZ68 (Houston, TX), I am writing to notify the Commission of the completion of the addition of the digital emissions designator, as authorized under its June 2, 1999 license (FCC File No. BNPIF-19970718DA).

Should you have any questions about this matter, please contact the undersigned,

Respectfully submitted,


John Baugh
Spring Branch Independent School District

RECEIVED
FEB 02 2000
FEDERAL COMMUNICATIONS COMMISSION

cc: Clay Pendarvis
Todd A. Rowley

Statement of Proof of Performance

People's Choice TV Corp. ("PCTV") hereby certifies that the testing and proof-of-performance processes required by the Commission's July 10, 1996 *Declaratory Ruling and Order*, which established interim rules for the use of digital technology, have been satisfied. See *Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations*, 11 FCC Rcd 18839, 18863 (1996). On-site measurements have been taken at the transmitter output to confirm that transmissions meet the interim spectral mask, the maximum EIRP of its facility does not exceed the authorized EIRP, and the transmissions comply with the spectral energy dispersal requirements of the *Declaratory Ruling and Order*. Those test results will be furnished to the Commission upon request. This testing was completed under the direction of Michael P. Denny, PCTV's Vice President, Engineering, 5301 E. Broadway, Tucson, AZ 85711, phone: (520) 519-4400.

By: 
Michael P. Denny
Vice President, Engineering

Date: 8/3/99

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JAN 10 1980
M M D S CHANNEL LEASE

THIS MMDS CHANNEL LEASE ("The Agreement") entered into ^{AS OF} this 1st day of OCTOBER, 1988, between BLOCK & ASSOCIATES, a General Partnership, having its principal place of business at 5495 Wildwood Drive, Reno, Nevada, (hereinafter referred to as "Carrier"), and SPECCHIO DEVELOPERS LTD., having its principal place of business at 233 N. Garrard Street, Rantoul, Illinois, 61866 (hereinafter referred to as "Customer").

W I T N E S S E T H:

WHEREAS, Carrier has been granted a permit by the Federal Communications Commission (hereinafter referred to as the "FCC") to construct a Multichannel Multipoint Distribution Service (hereinafter referred to as "MMDS") system to operate on Channels E-1, E-2, E-3, and E-4 (hereinafter referred to as the "Channels"), as designated by Subpart K of Part 21 of the FCC's Rules, in the City of Houston, Texas and the immediately surrounding area (hereinafter referred to as the "Market Area") and has filed a covering license application for its operations on the Channels; and

WHEREAS, Customer is desirous of leasing all of the Channels from Carrier and Carrier is desirous of leasing such Channels to Customer.

NOW THEREFORE, in consideration of the premises and of the mutual promises, undertakings, covenants and conditions set forth herein, the parties hereto do hereby agree as follows:

1. Lease of Channels. Carrier hereby agrees to lease to Customer all of the Channels in order to permit Customer to provide program material to receivers in the Market Area. Such lease will be subject to all of the terms and conditions herein and of the General Terms and Conditions of Service (the "General Terms") attached hereto as Exhibit A and incorporated herein by reference in every respect as a part of this Agreement.

2. Service Charges.

(a) Customer shall pay connection fees for the lease as provided in the General Terms.

(b) Customer represents and warrants that it has paid to ITS the sum of \$23,300.00, to be applied against Carrier's account with ITS for the purchase of transmission equipment for Carrier. In addition, Customer shall pay Carrier the sum of \$1,800.00 per month for thirty (30) months with the first payment to be made on the fifth day of the first month following the Start Date as provided in the General Terms and Conditions.

(c) Customer shall assume and pay all expenses in connection with the operation, modification, upgrading, replacement, relocation, and maintenance of the Transmission equipment and all other expenses related to the operation of the Channels (including, without limitation, rent of leased space, taxes, consulting and engineering charges, insurance premiums, and utility bills for the period from and including October 1, 1987, to and including the date on which this Agreement is terminated. Customer shall reimburse Carrier for any such expenses related to the aforementioned period that have heretofore been, or may hereafter be, paid by Carrier.

3. Tariff.

(a) If required by the rules and regulations of the FCC, Carrier hereby agrees to file and maintain a tariff with the FCC which is in no way inconsistent with this Agreement and the General Terms and Conditions.

(b) In the event that Carrier is at any time not subject to tariff regulation, this Agreement shall remain in full force and effect and shall govern the service herein contemplated, except that the foregoing Paragraph 3(a) shall be deemed void and of no further effect.

4. Early Termination. Notwithstanding the provisions of the General Terms and Conditions attached herewith, Customer shall have the right to terminate this Agreement prior to the expiration of the initial term after January 1, 1989 upon the following terms and conditions:

(a) Customer provides thirty (30) days notice to Carrier; and

(b) Customer pays to Carrier on the termination date a sum equal to the following:

i. Eighteen (18) times the average monthly cost of operating the Transmission Point equipment and facilities twenty-four (24) hours a day, seven days a week;

ii. Eighteen (18) times the minimum monthly subscriber fee which would be otherwise payable if the agreement had not been terminated as provided in the General Terms and Conditions; and

iii. All sums then unpaid, but otherwise payable under the provisions of Paragraph 2 hereof.

5. Ownership of Equipment. Upon termination of this Agreement, all equipment purchased to transmit the signals to the Transmission Point shall be the property of Customer while all Transmission Equipment (as defined in the General Terms and Conditions) located at the Transmission Point (excluding back-up

or replacement equipment not then in use unless such equipment has been or was purchased by Carrier) shall be the property of Carrier.

6. Terms.

(a) All capitalized terms defined herein and used in the General Terms shall have the respective meanings ascribed thereto herein and all capitalized terms defined in the General Terms and used herein shall have the respective meanings ascribed thereto therein.

(b) In the event that the provisions contained herein are in any way inconsistent with the provisions contained in the General Terms, the provisions contained herein shall govern.

IN WITNESS WHEREOF, the parties, by their duly authorized signatory, have executed this Agreement on the date and year first above written.

BLOCK & ASSOCIATES

By: 

SPECCHIO DEVELOPERS LTD.

By: 

Houston, TX
F Group
-
WMI812

WM1872

received
11-27-90return due
12/27 ... no later

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COPY

sent to home office
11/20 Ed ex.M M D S CHANNEL LEASE

THIS MMDS CHANNEL LEASE (the "Agreement") entered into this 26th day of NOVEMBER, 1990, between ROBERT S. MOORE, having its principal place of business at 2131 Thornapple Drive, Toledo, Ohio, 43614 (hereinafter referred to as "Lessor"), and PEOPLE'S CHOICE T.V. PARTNERS, a Wisconsin Partnership, having its principal place of business at 233 N. Garrard Street, Rantoul, Illinois, 61866, (dba as PCIV of Texas, Inc., a Texas corporation), (hereinafter referred to as "Lessee").

W I T N E S S E T H:

WHEREAS, Lessor is an applicant for a license for Multi-Channel Multi-Point Distribution Service from the Federal Communications Commission (hereinafter referred to as the "FCC") to construct and operate Multi-Channel Multi-Point Distribution Service (hereinafter referred to as "MMDS") Channels F-1, F-2, F-3, and F-4 (hereinafter referred to as the "Channels"), as designated by Subpart K of Part 21 of the FCC's Rules, in the City of Houston, Texas, and the immediately surrounding area (hereinafter referred to as the "Market Area"); and

WHEREAS, Region IV Education Service Center has certain rights to the frequencies sought to be leased herein, and such certain rights if upheld may have to be released before this lease can become effective; and

WHEREAS, if Lessor obtains the required FCC license authorization and timely constructs the Channels and becomes the FCC unconditional licensee for the Channels, Lessee is desirous of ordering MMDS service from Lessor over all of the Channels and Lessor is desirous of providing such service to Lessee.

NOW THEREFORE, in consideration of the premises and of the mutual promises, undertakings, covenants and conditions set forth herein, the parties hereto do hereby agree as follows:

1. Use of the Channels.

(a) Leased Time. Lessor hereby leases to Lessee during the term of the Agreement the full and complete capacity on the Channels 24 hours per day, 7 days a week. Such capacity shall include but not be limited to the main channels, the vertical blanking intervals and the sub-carrier frequencies.

(b) Scope of Use. The Channels are provided to Lessee hereunder for the delivery of services of every kind and description including but not limited to the transmission of Lessee-provided pay television programming in an omni-directional pattern from the Transmission Point (as hereinafter defined) throughout the Market Area to reception points selected by Lessee. There shall be no restriction on the substance, format

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or type of information or signal to be transmitted thereover (unless required to comply with the provisions applicable by law including without limitation, the Communications Act of 1934, as amended, and the rules and policies of the FCC promulgated pursuant thereto). Lessor expressly disclaims any control over the content of Lessee's subscription television transmissions over the Channels except to the extent such control may be required to comply with the provisions of applicable law. Lessee agrees to indemnify and save and hold Lessor harmless from any claims that the program content violates any pornography or obscenity laws.

(c) Obligation to Transmit. Nothing in this Agreement shall be construed to obligate or create a duty on the part of Lessee to actually provide to Lessor for transmission any minimum number of hours of programming during the air time covered hereby, but the absence of programming shall not relieve Lessee of its obligation to pay Lessor the fees due hereunder. Furthermore, Lessee shall perform its obligations as to the terms and conditions of this Lease in such a manner so as to not unduly or without just cause, create a condition which places Lessor's FCC license at risk.

(d) Preemption. The Channels provided to Lessee hereunder are subject to preemption by Lessor for reasons of national or local emergency or in accordance with any requirement or order of the FCC or any other local, state or federal regulatory authority with jurisdiction over the operation of the Channels.

2. Term.

(a) Initial Term. Subject to the provisions for earlier termination contained in Paragraph 12 hereof, the term of this lease pursuant to the Agreement shall commence upon the date hereof and shall continue in full force and effect for a period of five (5) years from the Start Date as defined in Paragraph 6 hereof. Said period is hereinafter referred to as the "Initial Term".

(b) Renewal Term. Subject to the provisions for earlier termination contained in Paragraph 12 hereof, the term of this lease pursuant to the Agreement shall be extended for two successive additional terms (such additional terms are hereinafter referred to as "Renewal Terms") of five years each unless Lessee shall have served written notice on Lessor at least six months prior to the expiration date of the then current term that it elects to terminate the Agreement at the end of the then current term. And, furthermore, at the conclusion of the second Renewal Term noted above, Lessee shall have available for its continued exclusive use, two (2) added successive Renewal Terms (the Extended Renewal Terms) of five (5) years each. Provided that Lessee is not in breach of this Agreement, and that Lessee serves notice to Lessor of not less than six (6) months notification of its intent for Extended Renewal. The terms and conditions under the Renewal Terms and Extended Renewal Terms shall be the same as provided for in the Initial Term, with the exception of Transmission Fees as noted within Section Five (5) herein.

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3. Facilities.

(a) Transmission Point. Lessor's application for a conditional license shall specify a transmission point to be located at a site to be agreed upon by the parties after the execution of this Agreement (hereinafter the "Transmission Point").

(b) Transmission Equipment.

(i) At its sole cost and expense Lessee shall purchase and install such transmission and other equipment (hereinafter "Transmission Equipment") as is required to operate the Channels in accordance with the provisions of Lessor's FCC authorization, all applicable FCC rules, standards of good engineering practice, any site lease agreement and proper maintenance requirements. Any equipment used in the construction of the Transmission Equipment shall be owned by Lessee. Lessee hereby leases to Lessor the Transmission Equipment during the Initial Term of this Agreement and any Renewal Terms thereof. Lessor agrees to pay to Lessee the sum of \$1.00 per year, payable in advance for the lease of the Transmission Equipment.

(ii) At the end of the fifteenth (15th) year after the Start Date herein, all original equipment installed by Lessee during the Initial Term for the exclusive use involving Lessor's FCC license as noted with subsection 3(b)(i) above, shall be deeded to Lessor without encumbrance as to any lien or debt against such equipment, and thus becomes the property of Lessor. (The meaning of exclusive use equipment for the purpose of this paragraph shall be that equipment: transmitters, combiner, power supply, etc., used solely in the performance of Lessor's F group primary channels, and shall not include any equipment used within Lessee's co-located transmission/distribution system which is used in any common or shared fashion). Thereafter, during any Extended Renewal Term of this or any Air Time Lease Agreement between Lessor and Lessee, Lessee shall have the right to use such equipment on the terms and conditions contained within this Agreement, for a sum of \$1.00 for an annual lease of equipment, prepaid to Lessor on each anniversary date of the then in-existence Air Time Agreement.

(iii) It shall be Lessee's option to continue to operate under the terms and conditions of subsection 3(b)(ii) above for extended use of the Transmission Equipment, and/or, provide for newer equipment or replacement. Any such newer and/or replacement equipment shall be used under the same terms and conditions contained within the entirety of Section 3 herein. Including at the then end of any fifteenth year of use from the installation of equipment, the ability by Lessor to acquire such equipment as Lessor's property per subsection 3(b)(ii).

(c) Lease of Transmission Point. Within ninety (90) days of the date the FCC grants a final order for a conditional license to build the Channels, Lessee shall present Lessor with a sub-lease for Lessor's execution, as one of the co-located FCC licensees, to utilize sufficient space to accommodate Lessor's reasonable needs for the installation and operation of the leased equipment noted within subsection 3(b) above.

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Such sub-lease shall be binding upon the Owner of the Transmission Point Facility and allow for Lessor's continued use of such facility in the event that this Agreement between Lessor and Lessee is terminated prior to the full anticipated Term(s) of Agreement. The sub-lease shall be an extension of a master lease executed between Lessee and the Transmission Point Facility Owner or its agent and shall contain, proportionate to all FCC licensees operating a co-located station with Lessee's Wireless System serving the market area, the same terms and conditions as exacted by Lessee for Lessee's behalf and the interests of the co-located licensees whom have separate Air Time Leases executed with Lessee.

(d) Risk of Loss. Lessor shall have no responsibility for any loss or damage to the Transmission equipment unless such loss or damage is caused by Lessor or its employees or agents.

(e) Power Increase. If Lessee so requests, Lessor will file an application with the FCC seeking authority to increase the output power of the Channels to a higher level requested by Lessee, provided that such higher level is in accordance with FCC regulations and will not be reasonably anticipated to cause harmful electrical interference to any other radio transmission facility for which application has previously been accepted by the FCC or authorization granted by the FCC, and which is entitled to protection from such interference under FCC rules and regulations. In the event that said authorization is obtained, Lessee shall install appropriate amplifiers in order to effect said power increase and such amplifiers shall thereupon become part of the Transmission Equipment. Lessee shall pay all costs, including legal, engineering, equipment, construction, installation and other expenses associated with said application and power increase, regardless of whether the application is granted or not.

(f) Station Construction. Per the terms and conditions contained within this MMDS Channel Lease, Lessee shall use proper and appropriate good engineering standards and practices in acquiring equipment and installing such for Lessor's licensed use at the co-located Transmission Point Facility. Per the FCC rules and regulations, Lessee may elect to use a qualified third party, such as an engineering consultant and/or an outside firm, recognized for their expertise in designing, constructing and installing the needs of Lessor's FCC license, including Lessee's needs relevant to Lessee's co-located system serving the market.

4. Operation of the Channels.

(a) Operation of the Transmission Equipment. Lessee shall supply, at its sole cost and expense, personnel to operate and maintain the Transmission Equipment. Said personnel shall insure that the Transmission Equipment shall at all times meet the technical operating requirements set forth in the rules and regulations of the FCC. All operations and maintenance activities shall be undertaken at such times as are consistent with the operating requirements of Lessee's business. Lessor and Lessee shall cooperate to ensure that each of them at all times is fully aware of any and all operations, maintenance and repair activities on the Transmission Equipment. All maintenance personnel

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shall be under the technical direction, supervision and control of Lessor but shall be contracted for and shall be supervised on a day-to-day basis by Lessee at Lessee's sole expense. All repairs shall be completed as soon as reasonably possible following notification by Lessor to Lessee of the need therefor. Lessee shall not rearrange, disconnect, remove or repair any of the Transmission Equipment without Lessor's consent. Lessee shall have access to the station facilities at all times for any of the foregoing activities subject to the terms of the lease of the Transmission Equipment.

(b) Operation of Additional Equipment. Lessee, at its own expense may make alterations or install attachments to the Transmission Equipment (including, without limitation, encoding and/or addressing equipment selected by it) as may be required by the exigencies of its business from time to time, provided that (i) such alterations and attachments do not violate any FCC rules or regulations or site lease conditions or restrictions; (ii) FCC authorization, if required, has been obtained, and (iii) if required by the FCC, such changes are made subject to Lessor's approval and under Lessor's supervision. Lessor shall use its best efforts to obtain any required FCC authorization. Lessee shall be responsible for the operation, maintenance and repair of all equipment provided by it and shall indemnify Lessor against and shall pay all costs, including legal, engineering, equipment, construction, installation and other expenses, associated with any alterations or attachments to the Transmission Equipment pursuant to this Paragraph 4(b).

(c) Interference with Existing Operations. Lessor and Lessee will cooperate in the operation and maintenance of the Transmission Equipment as well as any alterations or attachments added thereto, in such a fashion as to ensure that the Channels do not create or increase harmful interference with existing Multi-Point Distribution Service, MMDS, Private Operational Fixed Service, Instructional Television Fixed Service or any other applicants, permittees or licensees which are entitled to protection from such interference under the rules and regulations of the FCC.

(d) Reception Equipment. Lessor has no responsibility hereunder to provide any reception antennas, down converters, decoders, descramblers, related power supplies or any associated equipment ("Reception Equipment") required to display signals transmitted over the Channels on a television set. Lessee may, in its sole discretion and on terms and conditions of its choosing, install or cause to be installed such Reception Equipment, provided and selected by Lessee, as may be required, from time to time, in order for the general public, or any member thereof, to view the programs to be transmitted over the Channels. Title to all Reception Equipment provided by Lessee hereunder shall vest in Lessee or its designee. Lessee shall be required to install Reception Equipment only at particular locations selected by it. Reception Equipment shall be installed, maintained, operated and controlled by Lessor to the extent required by the FCC rules and regulations.

(e) Program Origination and Delivery. Lessee shall be solely responsible for the origination of all programming to be transmitted over the Channels and the delivery of such programming to the Transmission

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Point to the costs of point-to-point microwave channels and earth stations, if any, which it may require for such purpose. Lessee shall bear all costs and expenses of purchasing, installing, operating and maintaining those facilities. Any personnel required to install, operate and maintain any program origination and delivery facilities shall be provided by Lessee, at its sole cost and expense. Such personnel shall be under Lessee's exclusive control, unless such is provided by Lessor pursuant to Paragraph 4(f) hereof.

(f) Point-to-Point Microwave Channels. If so requested by Lessee, Lessor shall apply to the FCC for authority to operate point-to-point microwave channels (hereinafter referred to as "Point-to-Point Channels") for Lessee's use in delivering signals between certain origination points to/from the Transmission Point and upon FCC grant of such Point-to-Point Channels, Lessor shall make grant of such service available to Lessee should the grant be given. Lessor's obligation to provide Point-to-Point Channels hereunder is conditioned upon (a) the availability of frequencies, (b) the receipt of all necessary governmental approval, (c) space and power being available as required at both ends of the requested signal path, (d) the existence of a clear path for transmission of signals between the requested point of the Point-to-Point Channels and the Transmission Point, (e) the provision of such Point-to-Point Channels not violating any law, ordinance, rule or other regulation of any body having jurisdiction, and (f) payment by Lessee of all direct costs, including legal, engineering, equipment, construction, installation, operating and other expenses associated with the provision of such Point-to-Point Channels with expenses are reasonable incurred and reasonable in amount, whether government approval is granted or not.

(g) Operating Expenses. Lessee shall be solely responsible for and shall indemnify and hold Lessor harmless from the operating expenses resulting from the provision of service over the Channels, including rent of leased space, taxes, engineering charges, insurance and utilities.

5. Charges and Fees. Due to various marketplace uncertainties and circumstances noted within Section 8 herein, Lessor and Lessee have negotiated a potential two phase method for Transmission Fee compensation, a definitive schedule of payment; and the vehicle for an agreeable modification of that schedule, providing for a Grant-in-Aid repayment, if required.

(a) Transmission Fee(s). Commencing with the first full month after the Start Date, and thereafter until revised as noted below, Lessee shall pay to Lessor a monthly Transmission Fee of One Thousand Dollars (\$1,000). Furthermore, a sum of five thousand dollars (\$5,000), representing the first five months (the Initial Payment) of Transmission Fees payable after the Start Date, shall be prepaid by Lessee within ten (10) working days following the mutual execution of this Agreement. The first month's payment, representing \$1,000 of this Prepayment amount is non-refundable in that it binds both parties to this Agreement. The remaining amount (\$4,000) is to be promptly refunded to Lessee in the event Lessor is unable to timely comply with subsection 7(a) herein.

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(b) Monthly Schedule of Transmission Fee Payment(s). Effective with the twenty-fifth month after the Start Date, and conditioned upon those matters noted within sub-section 5(c) herein, Lessor shall make the following Transmission Fee payments, of which the monthly amount due shall be the greater of the two calculations noted below; the then monthly minimum amount, or the monthly per subscriber factor.

<u>Monthly Period(s)</u>	<u>Minimum Payment</u>	<u>Per Sub Factor/Rate</u>
for months 25 through 36	at \$2,500	or, \$.25/sub/month
for months 37 through 48	at \$2,750	or, \$.275/sub/month
for months 49 through 60	at \$3,300	or, \$.30/sub/month
for months 61 through 120	at \$4,125	or, \$.33/sub/month
for months 121 through 180	at \$5,250	or, \$.385/sub/month
for months 181 through 240	at \$6,750	or, \$.45/sub/month
for months 241 through 300	at \$9,000	or, \$.60/sub/month

(c) Grant in Aid. The parties recognize that in order to obtain the release of any and all interests in the Channels as they are presently licensed (and thus grandfathered from use by Lessor), and furthermore to obtain certain agreements and/or releases as to current rights or interests held by the markets other licensees, selectees and/or applicants for the ITFS frequencies in general; certain payments may be required to be made to those having an interest or claim in the Channels and other ITFS frequencies. Such interests must be terminated before Lessors license application can be perfected.

Lessee commits itself to use good faith in negotiating the best terms possible for any required release of right and/or termination of interests required in order to provide a settlement for the market which may assist Lessor in perfecting its license grant. Lessee shall provide Lessor with a complete copy of any agreement Lessee makes with respect to the termination of any interest in the Channels and with those specific agreements required on behalf of other ITFS entities involved with the settlement and/or realignment of the market's FCC frequencies. Lessor agrees that any sums paid by Lessee directly related to the Channels and settlement issues shall be provided as a Grant-in-Aid by Lessee on the behalf of Lessor. And these funds shall be credited against the payments required to be made by Lessee pursuant to the provisions of Paragraph 5(a) and 5(b) of this Agreement. However, if such sums required for this Grant-in-Aid provision exceed \$375,000, then Lessee and Lessor shall confer as to the reasonableness and justification of such sum(s) expected to exceed the \$375,000. Lessor shall have the right to pre-approve these added expenses, and such approval shall not be unreasonably withheld. In no event, however, shall the monthly Transmission Fee payment required to be made by Lessee pursuant to provision 5(b) be reduced to less than \$1,000.00 during the repayment condition for the Grant-in-Aid funds.

Lessor and Lessee acknowledge that expenses to be incurred by the Grant-in-Aid funding are contemplated for the sole purpose of those items noted above, and made specifically, but not limited to, the involvement and cooperation of the following licensees, selectees and

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applicants with standing in the market: Region IV Education Service Center (licensee of "A" & "F" groups, relocation of "F" to the "C" group and various contractual incentives), Hispanic Information and Telecommunications Network (singular applicant of "C" group, relocation to "G" group), Houston School for Deaf Children (singular applicant for "G" group, withdrawal of its application and FCC standing), plus other elements involving a realignment of groups A, B, C & D to a non-interleaved, yet co-located, frequency condition within the Wireless System requiring numerous technical or contractual considerations and FCC authorization.

Nothing contained herein shall require Lessee to enter into any agreements for the termination or release of interests in the Channels or the marketplace settlement for frequency allocation and realignment. However, if by one year of the date hereof, Lessee has not obtained an agreement from all those parties having an interest in the Channels and the market's settlement noted above, as termination of such interest and/or certain contractual agreement is necessary to enable Lessor to be licensed for the Channels, then Lessor may, upon notice to Lessee, terminate this Agreement. Subsequently, in the event that an Agreement termination does occur, then neither party shall have any further liability to the other party under the provisions of this Agreement.

(d) Computation of Number of Subscribers. For purposes of computing the Transmission Fee due hereunder for any month, the term "Subscriber(s)" shall be deemed to mean the number of basic service or entry level subscribers receiving Lessee's programming over the Channels as of the last day of the month in question, except that in the month in which service is terminated upon expiration of the Initial Term or a Renewal Term or pursuant to Paragraph 12 hereof, the number of such subscribers shall be determined as of the date of termination. In those situations where programming is sold in bulk for viewing at isolated locations in the same facility (that is, where a number of viewing units are grouped for billing purposes such as may be the case with hotels, apartments and condominiums) and Lessee's rates therefore are less than its prevailing monthly rate for the sale of Lessee's MMDS programming to individual Subscribers in the Market Area, the number of Subscribers from such bulk billing facility shall be equal in amount to the monthly revenue derived from such bulk billing facility divided by the standard or basic subscriber fee charged by Lessee in the Market Area.

(e) Required Certificate, Invoice and Payment Procedures. Lessee shall, within twenty (20) days of the end of each month after the Start Date, provide Lessor with a Certificate signed by an agent of Lessee showing the number of subscribers served on the last day of the preceding month, computed in accordance with Paragraph 5(b) and 5(d), or the Subscriber Fee payable by Lessee to Lessor as determined in accordance with Paragraph 5(a), whichever is applicable hereof. Such payment shall be computed on the Certificate, and Lessee shall forward said Transmission Fee to Lessor at the time of rendering the Certificate. Lessee shall include on the Certificate any other information reasonable requested by Lessor, so that Lessor may accurately

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determine that the Transmission Fee tendered by Lessee has been calculated correctly pursuant to Paragraphs 5(a), (b), (c) and (d) hereof. Any other charges to be paid by Lessee hereunder shall be invoiced to Lessee on a monthly basis by Lessor. Said invoices shall contain an itemization of the charges contained therein, and shall be paid by Lessee within thirty (30) days after the date thereof.

(f) Additional Fee. In the event that Lessee requests Lessor to apply to the FCC for a new Transmission Point for the Channels or requests that Lessor file an application with the FCC for a power increase in accordance with Paragraph 3(c), than at Lessor's option, Lessee and Lessor shall agree in writing on a good faith estimate of all costs, including legal, engineering, equipment, construction, installation and other expenses reasonably expected to be incurred by Lessor, such costs hereinafter referred to as the Additional Fee. The entire Additional Fee shall be paid directly by Lessee.

(g) Right to Audit. Lessee shall, while this Agreement is in force, keep, maintain and preserve complete and accurate records and accounts, including all invoices, correspondence, ledgers, financial and other records pertaining to Lessee's charges hereunder, and such records and accounts shall be available for inspection and audit at the offices of Lessee. Once each year, Lessee shall secure an audit of its income statement for the Market Area which is to be prepared in accordance with generally accepted accounting principles. For that portion of Lessee's annual audit statement which represents Lessee's subscriber base as being served via The Channels, Lessee shall deliver a copy of said audit subscriber count section to Lessor within 15 days after receipt of said audit. Notwithstanding the forgoing audit, Lessor shall be entitled to audit Lessee's records and accounts for the period covered by an independent audit by giving Lessee notice of its election to do so within 30 days after Lessor's receipt of the independent audit report. Lessor shall conduct this audit at Lessor's expense and shall complete it within 45 calendar days after beginning it. Lessee shall not interfere with Lessor in the exercise of its rights of inspection and audit set forth herein. The exercise in whole or in part at any time or times of the right to audit records or accounts or of any rights herein granted or the acceptance by Lessor of any statement or remittance tendered by or on behalf of Lessee shall be without prejudice to any rights or remedies of Lessor herein and shall not preclude Lessor thereafter from disputing the accuracy of any such statement or payment. In the event that Lessee disputes the number of Subscribers determined by Lessor in any audit hereunder, such dispute as to the number of Subscribers, and only such dispute and no other, shall be resolved pursuant to Section 14(p) hereof; such dispute shall not in any way result in a default hereunder unless the determination made pursuant to Section 14(p) is not complied with. All information obtained by Lessee or Lessor during any audit shall be kept confidential. Once Lessor has accepted Lessee's audit statement as a correct account of the subscriber or the minimum Transmission Fee(s) owed and paid for the year in question, Lessee shall not be required to maintain prior subscriber records longer than three years as historic information. If Lessor does not elect to invoke Lessor's own annual audit within ninety days from receipt of Lessee's audited subscriber statement, then such statement shall be deemed as accepted and final.

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(h) Subscriber Contracts. Lessor shall not interfere with the right of Lessee or its designee to lawfully modify, waive, rescind, terminate, in whole or in part, or cancel any and all services or contracts with Subscribers. In case any such services or contracts are rescinded, terminated or cancelled, Lessor shall not be entitled to any participation in revenues or claims whatsoever with respect to the unperformed portion of any such contract, provided, however, that Lessor shall be entitled to payment of the Subscriber Fee for MMDS service rendered by Lessee to a Subscriber for all or a portion of any month.

(i) Proration of Fees. In the event that (i) the Start Date shall be a date other than the first day of a calendar month, or (ii) the Agreement shall be terminated on a date other than the last day of a calendar month and it is determined that such termination shall have occurred in a manner not affecting Lessor's right to payment hereunder, Subscriber Fees payable hereunder shall be prorated for the partial month of service. In any month where a proration is required the Subscriber Fee due Lessor in such month shall be determined by multiplying the fees calculated under Paragraph 5(a) hereof by a fraction, the numerator of which is equal to 2,880 minus the total number of channel hours (rounded to the nearest whole number) that each of the Channels were unavailable to Lessee during said month and the denominator of which is 2,880.

6. Start Date. For purposes of this Agreement, the Start Date shall be the earlier of the date upon which Lessee begins programming The Channels or six months after the date FCC grants a construction permit (conditional license) for the construction of the Channels, whichever first occurs.

7. Conditions Precedent. Except for the provisions hereof that relate to the rights and obligations of Lessee and Lessor which come into existence prior to the Start Date, all of the rights and obligations governing service on the Channels hereunder shall be subject to the following conditions precedent, which conditions may be waived in writing by the non-defaulting party.

(a) FCC Action. Lessor, to the extent required by the FCC, shall (i) have been granted authority to operate the Channels as required hereby, and (ii) shall provide access to the Channels to Lessee in accordance with the scope and intent of this Agreement.

(b) Laws and Rules. Lessor's obligations hereunder are conditioned on Lessee using the Channels in accordance with all applicable laws, FCC rules and regulations, and compliance by Lessee with the terms of this Agreement. Lessee's obligations hereunder are conditioned on Lessor operating the Channels in accordance with all applicable laws and FCC rules and regulations, and compliance by Lessor with the terms of this Agreement.

8. Authorization and Licenses. Further Efforts.

(a) Pre-Licensing Conditions The parties shall cooperate in the filing with the FCC of all documents necessary for Lessor to become licensed to operate the Channels per the terms and conditions of this Agreement. And, provided that Lessee has given prior approval of such,

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Lessee agrees to pay for all reasonable costs associated with the perfection of Lessor's FCC license efforts as such is directly related to the terms and conditions of this Agreement. Furthermore, Lessor recognizes that Lessee has extended a significant past and present effort(s) in its business for the development of a Wireless Cable Television System to serve this marketplace. These efforts have resulted in progress made that may ultimately benefit Lessor's interests and the interests of Lessee. These past, present and future efforts on Lessee's part have and may require considerable added expense of both time and money being invested by Lessee. Therefore, Lessor herein agrees to maintain a strict confidentiality of all matters pertaining to information relating to Lessee's interests and involvement within this market and Lessee's business plans generally, as such information may become available to Lessor from time to time. If ever an occasion arises as to this confidentiality mandate, Lessor shall notify Lessee of such, then Lessee and Lessor shall advise each other of any ramifications of such, and then decide upon appropriate action to be taken, if any is warranted.

(b) Maintenance and Modification of License for Channels. Throughout the Initial Term and any Renewal Term, and any Extended Renewal Term, Lessor shall use its best efforts to obtain and maintain in force all licenses, permits and authorizations required or desired in connection with Lessee's use of the Channels. Where requested to do so by Lessee, Lessor shall apply for, and use its best efforts to obtain, those reasonable modifications in its licenses, permits and authorizations which would help Lessee in its business. Lessee shall be responsible for all costs, including legal, engineering, equipment, construction, installation, and other expenses, associated with any said modification for use of the Channels initiated by Lessor at Lessee's request.

(c) Unauthorized Reception over Channels. Lessor, if requested by Lessee and to the extent required, shall use its best efforts to prevent any unauthorized individual or entity from receiving the signals transmitted over the Channels. Lessee shall be responsible for and shall reimburse Lessor for all costs, including legal, engineering, equipment, construction, installation and other expenses associated with any prevention efforts regarding unauthorized reception over the Channels initiated by Lessor on Lessee's behalf and at Lessee's request.

9. Specifications.

(a) Technical Specifications. Except as otherwise provided herein, the Channels shall at all times transmit signals which conform to the technical specifications and other relevant provisions of the FCC's rules and regulations.

(b) Technical Exceptions. Lessee-provided equipment and communications systems may be connected to the Transmission Equipment where such connection is made in accordance with the provisions hereof. Notwithstanding anything in the provisions of Paragraph 9(a) to the contrary, Lessor shall not be responsible for (i) the quality of signals generated as a result of equipment provided by Lessee and connected to the Transmission Equipment or for defects caused by such Lessee-provided

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equipment and communications systems, or (ii) the reception at the Transmission Point of signals generated by equipment provided by Lessee and Lessee shall promptly cure any technical problems or violation.

10. Limitation of Liability.

(a) In General. Lessee shall indemnify and hold Lessor harmless for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission occurring in the course of furnishing services or facilities hereunder. Without limitation, Lessor will not be liable in any way whatsoever for the following: (i) damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission caused by the negligence or acts or omissions of Lessee or its employees, contractors or agents; (ii) failure in any way related to any equipment installed by Lessee; (iii) the failure of equipment not provided by Lessor or not under its control; (iv) failure caused by acts of God, sabotage, vandalism, or negligence or acts or omissions of any third party; or (v) failure in any way related to the reception of programming at the Transmission Point which fails to meet the technical specifications set forth herein. Moreover, Lessor shall not be responsible for (vi) the quality of the signal delivered to it by Lessee or by a third party under agreement with or under the control of Lessee; (vii) any degradations or outages in the delivery of Lessee's signal to the Transmission Point which are the result of, or attributable to, the failure of transmission lines or equipment provided by, or under the control of, Lessee, or any third party under agreement with Lessee; (viii) any outage which occurs at any reception point resulting from a failure of reception equipment or a distribution system at that reception point; or (ix) any outage which is caused by a failure of Point-to-Point Channels, not under the control of Lessor, which are used to deliver signals to the Transmission Point.

(b) Damage to Premises. Lessor shall not be liable for any defacement of or damage to any premises resulting from the installation or removal of Transmission Equipment, Reception Equipment or any other equipment from such premises by Lessee.

(c) Indemnification. Each party hereto shall forever protect, save, defend and keep the other party harmless and indemnified against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever arising directly or indirectly out of the acts, omissions, negligence or willful misconduct of the indemnifying party, its employees or agents in connection with the indemnifying party's performance of its obligations under this Agreement. Moreover, Lessee shall forever protect, save, defend and keep Lessor and its owners, employees and agents harmless and indemnify them against (i) any and all claims, demands, losses, costs, damages, suits judgments, penalties, expenses and liabilities resulting from claims of libel, slander or the infringement of copyright or the unauthorized use of any trademark, trade name, service mark or any other claimed harm or unlawfulness arising from the transmission of any programming; and (ii) claims for infringement of patents arising from Lessee's use of the Transmission Equipment in connection with apparatus or systems of Lessee. Where such

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indemnification is sought by a party (the "Claiming Party"), (a) it shall notify the other party (the "Indemnifying Party") promptly of any claim or litigation or threatening claim to which the indemnification relates, (b) upon the Indemnifying Party's written acknowledgement of its obligation to indemnify in such instance, in form and substance satisfactory to the Claiming Party, the Claiming Party shall afford the Indemnifying Party the opportunity to participate in and, at the option of the Indemnifying Party, control, compromise, settle, defend or otherwise resolve the claim or litigation (and the Claiming Party shall not effect any such compromise or settlement without prior written consent of the Indemnifying Party) and (c) the Claiming Party shall cooperate with the reasonable requests of the Indemnifying Party in its above-described participation in any compromise, settlement, defense or resolution of such claims or litigation.

11. Representations and Warranties. Each of the parties hereto represents and warrants to the other the following, with respect to facts and issues relating to it:

(a) Organization. Lessor will, on the Start Date, have full power and authority to own its property, to control the FCC authorizations for the Channels and to carry out all of the transactions contemplated hereby. Lessee has full power and authority to own property and to carry out all of the transactions contemplated hereby.

(b) Compliance with Law. Lessor and Lessee shall comply with all laws, rules and regulations governing the business, ownership and operation of the Channels. Except as otherwise stated herein, no consent, approval or authorization by or filing with any governmental authorities on the part of Lessor or Lessee is required in connection with the transactions contemplated herein. All attendant contracts and undertakings, as well as the carrying out of the provisions of this Agreement, will not result in any violation or be in conflict with any judgment, decree, order statute, rule or regulation of any governmental authority applicable to Lessor or Lessee.

(c) Requisite Authority. All requisite resolutions and other authorizations necessary for the execution, delivery, performance and satisfaction of this Agreement by Lessor and Lessee have been duly adopted and complied with.

(d) Misrepresentation of Material Fact. No document or contract which has been shown by one party hereto to the other and which in any way affects any of the properties, assets or proposed business of either party as it relates to the subject matter of this Agreement, and no certificate or statement furnished by either of them or on behalf of them in connection with the transactions contemplated herein contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein not misleading.

12. Termination.

(a) Termination of FCC Authorization. Lessee may terminate this Agreement without further liability to Lessor upon prior written

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notice to Lessor in the event that following the commencement of service on the Channels hereunder, Lessor's authority to provide the Channels in accordance with the terms of this Agreement shall have terminated. If termination shall occur pursuant to this Paragraph 12(a), such termination shall extinguish and cancel this Agreement and its effect absolutely without further liability on the part of either party to the other; except that Lessee shall remain obligated to pay all Transmission Fees, and other payments required by this Agreement through the date of such termination.

(b) Termination by Reason of Default and Nonperformance. If Lessee fails to complete the construction of the transmission equipment within six months of the date Lessor is required to begin construction of the Transmission Equipment pursuant to Paragraph 3(b), then this agreement may be terminated by Lessor upon notice to Lessee. At the option of a nondefaulting party, this Agreement may be terminated upon a material breach or default by the other party of its duties and obligations hereunder if such breach or default shall continue for a period of thirty (30) consecutive days after such party's receipt of notice thereof from the nondefaulting party. If a breach or default occurs which cannot be remedied completely within thirty (30) days but the defaulting party initiates corrective action within the thirty (30) days and diligently pursues the corrective action to completion, no right to terminate shall arise. Failure to make any payment of Subscriber Fees, if such failure continues for a period of thirty (30) days after notice thereof to Lessee, shall constitute a material breach of this Agreement by Lessee. In the event of a material breach of this Agreement by Lessee and the consequent termination of this Agreement by Lessor, Lessee shall remain obligated to pay all Subscriber Fees and Additional Fees required by this Agreement through the date of such termination. Any termination pursuant to this Paragraph 12(b) shall not affect or diminish the rights, claims or remedies available in equity or at law to the nondefaulting party arising by reason of such breach of default.

(c) If, following the Start Date, technical interference should occur on the channels which is beyond the control of Lessee or Lessor and if, following the best efforts of Lessor and Lessee to reduce or remove such interference, such interference shall render such Channels unusable for the business purposes provided for in Paragraph 1(b) hereof, Lessee as its sole remedy, may terminate this Agreement, provide, however, that Lessee shall first give sixty days written notice to Lessor of its intent to terminate said Agreement and provide therein complete information concerning the origin, nature and duration of such interference and further provide that in the event a dispute shall arise concerning the amount or effect of such interference such dispute shall be resolved in the same manner as provided in Paragraph 14(p) hereof and the decision of the independent consultant as provided therein and shall bind Lessor and Lessee.

13. Purchase Option/Right of First Refusal.

(a) In the event that this Agreement is terminated by reason other than by default by Lessor, Lessor shall have the option to purchase the Transmission Equipment used exclusively for Lessor's license. The Leased Transmission Equipment; with the exclusion of that equipment used

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in a shared fashion (transmit antenna, decoders, combiners, etc.) for transmission (etc.) of signals common or co-located with Lessee's System. The purchase price shall be the book value of the Transmission Equipment at the then termination of this Agreement.

(b) Providing that FCC rules and regulations allow Lessee to own an interest in the Channels and to be licensed to operate The Channels, then at any time after twelve (12) months after the Start Date, Lessor shall have the right to request Lessee to make a one time Performance Payment of \$100,000 (the "Performance Payment"). This Performance Payment shall be paid by Lessee to Lessor within sixty days after Lessor demands same. If Lessor requires Lessee to pay the Performance Fee, Lessee shall have the right, at its option for a period of ninety (90) days, to acquire The Channels, including Lessor's FCC license for The Channels and all of the rights appertinent thereto. The price to be paid (the Purchase Price) by Lessee to Lessor shall be negotiated by the Parties in good faith.

If the Parties negotiate an agreed price, the Parties shall take all actions reasonably necessary to close the purchase, and the closing shall occur immediately after FCC approval for the transaction. Lessee shall receive a credit against the Purchase Price for the \$100,000 Performance Payment. However, in no event shall the Purchase Price be less than \$100,000 inclusive of the Performance Payment made, and applied as a credit to the Purchase Price agreed to.

If within 90 days after Lessee makes the Performance Payment, the Parties are unable to negotiate a Purchase Price, Lessor shall promptly refund to Lessee the Performance Payment and all of the rights under this paragraph shall terminate.

(c) Providing FCC Rules and Regulations allow Lessee to own an interest in the Channels, then Lessor grants Lessee a right of first refusal on any proposals for sale of all or any part of the Channels received by Lessor prior to the expiration of this Agreement. If any acceptable offer for sale of the channels is made to Lessor, Lessor shall give written notice to Lessee describing the entity to whom the proposed sale is to be made, the consideration to be received for the sale, the terms thereof and generally the relevant other terms and conditions of the sale. Lessee shall have a period of thirty (30) days after its receipt of such notice from Lessor in which to elect, by giving written notice to Lessor, to purchase for the same consideration for which Lessor proposed to sell the Channels to the third person.

If the fees, charges, rental or consideration to be paid by such third person are to be in whole or in part in a form other than cash, the consideration to be paid by Lessee shall be in cash in an amount equivalent to the fair value of the consideration payable by the third person and shall be so stated by Lessee as a sum certain in its notice of election.

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If Lessor does not believe Lessee's stated offer is in an amount fairly equivalent to the fair value of the consideration payable by the third person and so notifies Lessee in writing within seven (7) days after Lessor's receipt of Lessee's notice of election to purchase, Lessee may elect within five (5) days after its receipt of such notice from Lessor to refer such question for determination by an impartial arbitrator and the right of first refusal of Lessee shall then be held open until five (5) days after Lessee is notified of such determination. Said arbitrator shall be chosen either by agreement of Lessee and Lessor at the time such question arises, or, at the option of either party, by referring the question to the American Arbitration Association with instructions that the American Arbitration Association select a single arbitrator under a request from the parties for expedited and accelerated determination. The determination of the arbitrator chosen under either option contained in this subparagraph shall be final and binding upon Lessee and Lessor. The parties shall share equally in the costs and fees of the Arbitration.

In the event Lessee shall elect to exercise its said right of first refusal, the Agreement shall be consummated within fifteen (15) days following the day on which Lessor received notice of Lessee's election to exercise the right of first refusal or the day upon which any question required to be determined by the arbitrator hereunder has been determined, or at such other time as may be mutually agreed. The right of first refusal is terminated either by the lease to Lessee as provided herein or by notice to Lessee of Lessor's proposal to offer for use the channels or any part to a third person and Lessee's unwillingness or failure to meet and accept such a bonafide offer pursuant to the times and procedures as set forth above, provided that such proposed sale is consummated at the same consideration and upon the same terms as to which said right of first refusal applied, within thirty (30) days after Lessee's right of first refusal had expired or has been specifically waived by written notice given to Lessor by Lessee.

14. Miscellaneous.

(a) Force Majeure. Notwithstanding anything contained herein to the contrary, no party shall be liable to any other for failure to perform any obligation hereunder (nor shall any charges or payments be obligated to be made in respect thereof) if prevented from doing so by reason of fires, strikes, labor unrest, embargoes, civil commotion, rationing or other orders or requirements, acts of civil or military authorities, acts of God or other contingencies beyond the reasonable control of the parties, and all requirements as to notice and other performance required hereunder within a specified period shall be automatically extended to accommodate the period of pendency of any such contingency which shall interfere with such performance.

(b) Assignment of Interests. Subject to Section 13 above, Lessor may assign its rights and interests under this Agreement. Provided that the Assignee is qualified to hold such rights under FCC rules and regulations. And, furthermore, that such Assignee warrants to

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and accepts all terms, conditions, rights and obligations under this Agreement.

(i) Lessee may assign it's rights, obligations, values and interests under this Agreement, to any other lawful party. Provided that such Assignee shall warrant to and accept all terms, conditions, rights and obligations under this Agreement. Upon such assignment to another party by Lessee, Lessor may choose, but is not obligated to do so, to require that Lessee's assignment is conditioned upon Lessee's guarantee of performance for certain obligations contained within this Agreement.

(ii) Any assignment(s) by either Lessor or Lessee, if such action requires prior approval by the other party, such approval shall not be unreasonably withheld. Notwithstanding the aforementioned conditions contained within Section 14(b) (i) and (ii); Lessee may freely assign this Agreement, including all of its rights, terms and conditions thereof, for the purpose of collateralization use. Furthermore, Lessee may assign this Agreement to an entity in which Lessee has an interest thereof, for the purposes of establishing a Houston or State of Texas company or an affiliate of Lessee or a partnership, corporation and/or a joint venture, for business and operation of interests within the State of Texas or the Houston marketplace. Providing that the assignee warrants to the performance of all terms and conditions of this agreement.

(c) Notice. Any notice required to be given by any party to any other party shall be deemed to have been sufficiently given if given in writing, deposited in the United States mail in a sealed envelope with postage thereon prepaid and certified or registered, return receipt requested, addressed to Lessor or to Lessee, as the case may be, at their respective addresses set forth in the preamble hereto, or, if different, at the last known principal business address of each such party. Such notices shall be effective upon receipt by the addressee.

(d) Severability of Provisions. If any provision hereof is held invalid, the remainder of this Agreement shall not be affected thereby.

(e) Entire Agreement. This Agreement states the entire agreement as of this date between the parties with respect to the subject matter hereof and supersedes all pre-existing oral, letter or other agreements or commitments with respect thereto. This Agreement may be modified only by an agreement in writing executed by all of the parties hereto.

(f) Survival of Representations. All representations, warranties, covenants and agreements made by the parties hereto or in any certificate to be delivered hereunder or made in writing in connection with the transactions contemplated herein shall survive the execution and delivery hereof.

(g) Payment of Expenses. Except as otherwise provided herein, the parties shall pay their own expenses incident to the preparation and negotiation of this Agreement, including all fees and expenses of their respective counsel.

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(h) Further Action. From time to time after the date of execution hereof, the parties shall take such further action and execute such further documents, assurances and certificates as either party may reasonably request of the other in order to effectuate the purposes hereof. In addition, each party agrees that it will not take any action which would adversely affect the rights granted by it to the other party hereunder. Lessor will be reimbursed by Lessee for the reasonable costs incurred by Lessor in responding to Lessee's requests.

(i) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and shall become effective when each of the parties hereto shall have had delivered to it this Agreement duly executed by the other party hereto.

(j) Headings. The headings herein are inserted for convenience only and shall not constitute a part hereof.

(k) Dealings with Third Parties. No party is, nor shall any party hold itself out to be, vested with any power or right to contractually bind, or act on behalf of any other as its contracting broker, agent or otherwise for committing, selling, conveying or transferring any of the other party's assets or property, contracting for or in the name of the other party, or making any contractually binding representations as to the other party which shall be deemed representations contractually binding such party. In particular, Lessee shall not be identified as the FCC licensee or permittee of the Channels and Lessor shall not be held out as the programmer of the Channels.

(l) Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Illinois.

(m) FCC Rules. Anything contained herein to the contrary notwithstanding, nothing herein shall in any way limit the rights and remedies of Lessor or Lessee under FCC rules and regulations.

(n) License and Equipment. Other than provided within this Agreement, nothing contained herein shall be construed as granting to Lessee any rights in or to Lessor's FCC authorizations or licenses or in or to the Transmission Point.

(o) Time of Essence. Whenever this Agreement shall set forth any time for the performance of an act, such time shall be deemed of the essence.

(p) Disputes Regarding Proof of Performance. In the event that Lessee provides notice of its intent to terminate this Agreement pursuant to Paragraph 12 and a dispute arises regarding whether the technical interference has rendered the channels unusable as provided in Paragraph 12(c) and such dispute cannot be mutually resolved within five (5) days of such objection, Lessee and Lessor shall each appoint one (1) professionally knowledgeable independent consultant and such two

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consultants shall then select a third independent consultant to review the matter. The decision of a majority of such independent consultants shall bind both Lessor and Lessee. In the event that either party does not designate its choice of independent consultant to the other within thirty (30) days of Lessee's original notice, the one (1) designated independent consultant shall select both of the other two (2) independent consultants.

(q) Benefit. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and, to the extent permissible hereunder, assigns. Nothing in this Agreement, expressed or implied, is intended to, or shall (a) confer on any person other than the parties hereto or their respective heirs, legal representatives, successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, or (b) constitute the parties hereto partners or participants in a joint venture.

(r) Word Meanings. As used in this Agreement, the term "including" shall be deemed to mean including without limitation.

(s) Agreement Acceptance. Upon the receipt by Lessee (or Lessee's designate) of Lessor's duly executed Agreement (identified as document HOU-F/11.21), Lessee shall have thirty (30) days in which to deliver to Lessor (or Lessor's designate) an original document of this Agreement duly executed by Lessee; inclusive with the Partnership Resolution noted below, and the Initial Payment prescribed in Section 5(a) herein. Failure of Lessor to reasonably perform per this Section 14(s) shall cause this Agreement to be null and void.

IN WITNESS WHEREOF, both parties by their execution and delivery of this Agreement by it has been duly authorized, including a Partnership Resolution on behalf of Lessee, and each party has the requisite power to carry out its respective duties and obligations hereunder, have executed this MMDS Channel Lease on the date and year first written above as provided within Section 14(i) herein.

LESSOR:

LESSEE:

ROBERT S. MOORE
(Licensee Applicant)

PEOPLE'S CHOICE T.V. PARTNERS;
for PCTV of Texas, Inc.

By: Robert S. Moore

Its

By: _____

Its President

Dated: 11-26-90

Dated: _____

Witnessed By: Joanne Baker

Witnessed By: _____

Houston, TX
G Group
-
WNC208

Houston

AIRTIME LEASE AGREEMENT

THIS AIRTIME LEASE AGREEMENT ("Agreement") is made and entered into as of this 14th day of May, 1999, (the "Execution Date") by PEOPLE'S CHOICE TV OF HOUSTON, INC., a Delaware corporation, having its principal place of business at Two Corporate Drive, Suite 249, Shelton, Connecticut 06484 ("Lessee"), and HISPANIC INFORMATION AND TELECOMMUNICATIONS NETWORK, INC. (HITN) having its principal place of business at 449 Broadway, Third Floor, New York, New York 10013 ("Lessor").

WHEREAS, the Federal Communications Commission ("FCC") has authorized licensees in the Instructional Television Fixed Service ("ITFS") Channels to lease excess capacity to non-ITFS users; and

WHEREAS, Lessor is the licensee for four (4) six (6) MHz Channels utilizing the ITFS frequencies (the "Channels") in the Houston metropolitan area (hereinafter "Metropolitan Area"), Call Sign WNC208 constructed and operating at Wells Fargo Bank Plaza (the "Transmission Site"), and has determined that excess capacity exists after the fulfillment of its ITFS requirements. Each 6 MHz frequency licensed to Lessor shall be referred to as a "Channel"; and

WHEREAS, Lessee is in the business of providing channels for the distribution of voice, video and data via microwave transmission known as the Multi-Channel Multi-Point Distribution Service ("MMDS") and ITFS, and Lessee is desirous of leasing excess ITFS capacity from Lessor; and

WHEREAS, Lessor is in the business of educational and Spanish language video programming and data services via microwave transmissions known as Instructional Television Fixed Service ("ITFS") the network of listed receive sites, other receive sites and satellite transmission and reception facilities, together with terrestrial microwave equipment leased under this Agreement shall hereinafter be described as "Lessor's System";

WHEREAS, Lessee has entered into other ITFS, and/or Multipoint, Multichannel Distribution Service ("MMDS") and/or Multipoint Distribution Service (MDS) channel agreements with other licensees and applicants in the Metropolitan Areas so as to increase the number of channels that PCTV is able to utilize for the delivery of its services. The network of co-located channels thus created shall hereinafter be described as "Lessee's System"; and

WHEREAS, Lessee and Lessor agree that this Agreement supersedes any prior Airtime Lease Agreement, and Lessor and Lessee specifically cancel and void all previous Airtime Lease Agreements and other written and oral agreements, if any, by and between Lessor and Lessee for the Channels in the Metropolitan Area; and

WHEREAS, Lessor and Lessee acknowledge that any prior or existing defaults existing as of the date of the execution of this Agreement arising out of any prior Airtime Lease Agreement described above, if any, by Lessor or Lessee, are hereby waived and of no legal effect.

NOW, THEREFORE, in consideration of the premises and of their mutual promises, undertakings, covenants and conditions set forth herein, Lessor and Lessee do hereby agree as follows:

1. TERM OF AGREEMENT

(a) Initial Term. The initial term of this Agreement shall commence upon the Execution Date and shall extend for a period of five (5) years (the "Initial Term"), unless voluntarily terminated by written consent of both parties or involuntarily terminated as provided in Paragraph 10 below.

(b) Renewal Term. Provided Lessee's rights have not been terminated pursuant to Paragraph 10, this Agreement shall automatically renew, without further notice for two (2) successive additional terms (such additional terms are hereinafter referred to as the "Renewal Terms") of five (5) years each unless and until Lessee shall have served written notice on Lessor at least sixty (60) days prior to the expiration date of the then current term that it elects not to renew this Agreement for the Renewal Terms. It is acknowledged and agreed that the Lessee shall have the absolute right not to renew this Agreement notwithstanding any provisions hereof to the contrary.

(c) Exclusive Negotiating Period. Lessor agrees to negotiate exclusively with Lessee with respect to a new airtime lease agreement beginning on the Execution Date and ending upon the expiration or termination of this Agreement, whichever applies.

(d) Right of First Refusal. Lessor grants to Lessee a right of first refusal on any competing proposals for lease agreements of any part of the Channels received by Lessor within sixty (60) months after the expiration or termination of the final term of this Agreement. If any acceptable offer to lease the Channels is made to Lessor, Lessor shall give written notice to Lessee describing the person to whom the proposed lease is to be made, the fees, charges, rental or other consideration to be received for the lease, the terms thereof and generally the relevant other terms and conditions of the lease. Lessee shall have a period of thirty (30) days after its receipt of such notice from Lessor in which to elect, by giving written notice to Lessor, to lease any or all of the Channels for the same fees, charges, rental or other consideration for which Lessor proposed to lease the Channel or Channels to such third person. Written notice required under this section shall be deemed given on the date a certified receipt of mailing is signed by the recipient, if mailed, or when placed in the hands of the recipient, if sent by overnight courier. Calculation of time for any response notice shall begin on the date the notice is received by the party responding. If the fees, charges, rental or consideration to be paid by such third person are to be in whole or in part in a form other than cash, the consideration to be paid by Lessee shall be equivalent like kind consideration or cash in an amount equivalent to the fair value of the consideration payable by the third person and shall be so stated by Lessee as a sum certain in its notice of election.

(e) Arbitration Procedure. If Lessor does not believe that Lessee's stated offer is in an amount equivalent to the fair value of the consideration payable by the third person and notifies Lessee in writing within fourteen (14) days after Lessor's receipt of Lessee's notice of election to so lease, Lessee may, within five (5) days after its receipt of such notice from Lessor, elect to refer such question for determination by an impartial arbitrator and the right of first refusal of Lessee shall then be held open until five (5) days after Lessee is notified of such determination. Said arbitrator shall be chosen either by agreement of Lessee and Lessor at the time such question arises, or, at the option of either party, by referring the question to the American Arbitration Association with instructions to select a single arbitrator under a request from the parties for expedited and accelerated determination. The determination of the arbitrator chosen under either option contained in this subparagraph shall be final and binding upon Lessee and Lessor. The parties shall share equally in the costs and fees of the Arbitration.

(f) Right of First Refusal Procedure. In the event Lessee elects to exercise its right of first refusal, the lease agreement shall be consummated on the fifteenth (15th) day following the

day on which Lessor receives notice of Lessee's election to exercise the right of first refusal or the day upon which any question required to be determined by the arbitrator hereunder has been determined, or at such other time as may be mutually agreed. The right of first refusal is terminated either by the lease to Lessee as provided herein or by notice to Lessee of Lessor's proposal to lease the Channels or any part to a third person and Lessee's unwillingness or failure to meet and accept such a bona fide offer pursuant to the times and procedures as set forth above, provided that such proposed lease is consummated upon the same fees, charges, rental or other consideration as to which said right of first refusal applied, within thirty (30) days after Lessee's right of first refusal had expired or had been specifically waived by written notice given to Lessor by Lessee.

(g) Failure to Renew. It is understood by both parties that the additional Renewal Terms of this Agreement are conditioned upon Lessor receiving a renewal of Lessor's ITFS license from the FCC. In the event Lessor's license is not renewed through no fault of Lessor and assuming that Lessor has exercised best efforts to maintain Lessor's license for the Channels, the parties shall have no further liability to each other.

(h) Holdover Tenancy. During the right of first refusal period, the term of this Agreement shall be extended if any of the following conditions apply: (i) the parties are continuing negotiations for a new lease, or (ii) the parties are participating in arbitration, or (iii) Lessor has not entered into a binding agreement with a new lessee for the use of the Channels. The term will not be extended during the right of first refusal period if Lessor has not renewed because Lessor is utilizing all of its Channel capacity for its own ITFS purposes.

(i) Renewal Application. Lessor shall file all applications with the FCC and with any and all local, state and federal governmental agencies that are needed to enable Lessor to renew its ITFS license, at Lessor's expense.

(j) Maintenance of License. Lessor shall use best efforts to maintain and secure the FCC licenses for the Channels and/or any necessary maintenance, renewals and/or modifications of the FCC licenses for the Channels. Lessor shall at all times maintain the licenses for the Channels in full compliance with all FCC, federal, state and local governmental agency laws, rules and regulations but in the event Lessor fails to do so, Lessee may and is hereby authorized by Lessor to file with the FCC any documentation necessary to maintain the FCC licenses for the Channels in full compliance with all FCC, federal, state and local, laws, rules and regulations. Any costs paid by Lessee for Lessor's failure to maintain the FCC licenses for the Channels as described above will be credited toward any payment obligations owed by Lessee to Lessor under the terms of this Agreement. Lessor and Lessee shall promptly notify the other party in writing of any event known to it which may significantly affect the licenses, permits or authorizations for the Channels.

2. LEASE OF EXCESS CAPACITY

Lessee shall have the right to all airtime not used by Lessor (referred to as "Excess Capacity"). Lessor has determined that there will be Excess Capacity available on the Channels and, Lessee will have the use of the entire capacity on three (3) of the six (6) MHz Channels.

(a) Lessor's Airtime. Lessor shall have the right to use all of the capacity on one (1) six (6) MHz Channel ("Lessor's Channel") and all of the associated response channels for all of the Channels.

(b) Lessee's Airtime. Lessee shall have the right to use all of the Excess Capacity and, it shall have the use of the entire capacity on three (3) six (6) MHz Channels ("Lessee's Channels").

(c) Channel Loading. If Lessee requests, the parties agree to implement "Channel Shifting or Channel Loading" in lieu of "Channel Mapping", as defined by the FCC, as the method of allocating the airtime on the Channels between the parties, provided this action does not interfere with the operation of Lessor's System. Upon request by Lessee, Lessor agrees to file the necessary applications with the FCC to allow Lessor to implement Channel Shifting. Channel Shifting is the use by an ITFS licensee of an MDS or ITFS channel that is not authorized to the ITFS licensee but which is within Lessee's System to transmit the ITFS licensee's required educational usage programming.

(d) Division of Airtime on Expanded Channels. In the event Lessee deploys digital compression on its three (3) Channels, Lessee shall bear all cost to convert its three (3) Channels. All airtime created by digital compression by Lessee on Lessee's three (3) Channels, shall become Lessee's Airtime. Lessor shall pay all costs to deploy digital compression on its one (1) Channel, except for the one (1) digital transmitter and combiner leased to Lessor by Lessee pursuant to this Agreement, and shall have the use of airtime created by digital compression from the one (1) Channel. Lessor agrees to program its Channel to meet its FCC educational requirements within 6 months of the Execution Date. In the event that Lessor is not programming its Channel to meet FCC minimum educational requirements, Lessee shall have the right to program Lessor's Channel with educational programming; however, Lessor may recapture all of the airtime on its Channel with a 90 day written notice to Lessee of its intent to recapture.

(e) Control Over Transmission Equipment Operation. During those periods that Lessor retains time for transmission of its programs, Lessor shall have control over its programming feed and the transmitters used to broadcast its transmission. Such control shall be exercised by Lessor in a reasonable manner in order that Lessor's actions do not impair or contravene the requirements of this Airtime Lease Agreement, FCC rules and orders, or the needs of Lessee's System.

3. USE OF ITFS CHANNELS

(a) Lessor's Use of Channels. Lessor recognizes the mutual benefits and technological advantages of the use of encoding methods for program security, equipment signaling and individual addressability to control unauthorized equipment use. Lessor agrees that its programming and other airtime use will not harm or interfere with Lessee's use of programming encryption, pilot carrier signaling or any other technical services used in the operation of and delivery of services provided by Lessee's System. Any such use shall not affect Lessor's capacity, under standard engineering practices, to use Lessor's Channel. Lessor shall have the right to use its allocated airtime capacity for any and all uses allowed by law, including but not limited to video, voice, data, and all two-way services in accordance with the provisions provided in paragraph 25 herein and with the FCC rules and regulations, including to satisfy its FCC ITFS programming or educational use requirements, and to further Lessor's corporate mission.

Lessor and its officers, directors, shareholders and employees will hold in confidence all knowledge and information of a confidential, proprietary, secret or other unique nature which Lessor may learn with respect to the business of Lessee and Lessor agrees not to disclose, publish or make use of any information as described above without the written consent of Lessee. Lessee and its officers, directors, shareholders and employees will hold in confidence all knowledge and information of a confidential, proprietary, secret or other unique nature which Lessee may learn with respect to the business of Lessor and Lessee agrees not to disclose, publish or make use of any information as described above without the written consent of Lessor. The parties agree to designate Confidential Information pursuant to this provision and the provisions of paragraph 16 as confidential. Furthermore, the parties agree to keep the terms and conditions of this agreement confidential and proprietary, except as required by law and FCC regulations.

(b) Lessee's Use of Channels. Lessee shall have the right to use the Excess Capacity for any and all uses allowed by law and in accordance with FCC rules, including but not limited to video, voice, data and all two-way services.

(c) Emergency Airtime. The airtime reserved for both Lessee and Lessor shall be subject to pre-emption for reasons of national or local emergency or in accordance with any requirement or order of the FCC or any other state or federal regulatory authority with jurisdiction over the operation of the Channels.

4. FEES

(a) Subscriber Royalty Fees. In consideration of Lessor's lease of Lessee Airtime to Lessee, Lessee shall pay to Lessor on a monthly basis the Subscriber Royalty Fees as computed herein.

Month(s)	Base Monthly Minimum
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5/1/99 - 2/28/00 [months 1-10]:	\$3300
3/1/00 - 2/28/01 [months 11-22]:	\$3600
3/1/01 - 2/28/02 [months 23-58]:	\$3900
3/1/02 - 2/28/03 [months 59-70]:	\$4200
3/1/03 - 2/28/04 [months 71-82]:	\$4500

Lessee shall pay Lessor the greater of (i) the Base Monthly Minimum Payment; (ii) \$.35 per Subscriber or (iii) 0.5357% of Lessee's Adjusted Gross Revenue. The Base Monthly Minimum Payment beginning March 1, 2004 [month 83] will be adjusted annually by the national CPI. A "Subscriber" will be defined as any customer receiving wireless transmissions from Lessee's System and paying for one or more of Lessee's services provided over Lessee's System. Adjusted Gross Revenue ("AGR") is Lessee's gross revenue collected from Subscribers for services provided over Lessee's System, excluding any revenues derived from services or products not delivered over Lessee's System including, but not limited to, installation fees, equipment rental in the aggregate over time, equipment sales, taxes, (all of which shall not exceed Lessee's cost of installation and equipment), and third party pass-through charges, and service call charges (except for revenue received from service calls from Subscribers that pay a lower monthly service fee than other Subscribers that do not have to pay for the same service call). For purposes of this section, "third party pass-through charges" shall mean revenues collected by Lessee which are on behalf of and for services provided by a third party over Lessee's System and for which Lessee does not retain any share of the revenue. In addition, AGR shall exclude revenues derived from long distance services provided over Lessee's System (but shall specifically include the local loop service portion of the charges thereof provided over Lessee's System), any advertising revenue or other revenue derived from content and application services related to Lessee's data services and any e-commerce revenue. Notwithstanding the foregoing, however, any advertising revenue or other revenue derived from content and application services related to Lessee's data services and any e-commerce revenue over Lessee's System shall be included in AGR if i) the revenue derived is paid to Lessee based on the number of Subscribers in Lessee's System or based on purchases made by Subscribers in Lessee's System and ii) the aggregate revenue derived would account for 25% or greater of Lessee's AGR if it were included in the calculation.

All computations of Subscriber Royalty Fees herein shall be based upon the average number of Subscribers subscribing to Lessee's services in the Metropolitan Area. For purposes of this paragraph the average number of Subscribers shall equal the number of Subscribers as of the last day of the prior month plus the number of Subscribers as of the last day of the current month divided by two. For purposes of this paragraph, in situations where video programming services are sold in bulk (that is, where a number of viewing units are grouped for billing purposes - such

as may be the case with hotels and some multiple dwelling units), the number of equivalent Subscribers shall be determined by dividing the total monthly revenues derived from said bulk billing point by Lessor's then prevailing monthly rate for the equivalent service to individual subscribers in the Metropolitan Area.

(b) Required Certificate and Payment Dates. Within thirty (30) days of the end of each month in which airtime is used hereunder, Lessee shall provide Lessor with a statement certified as accurate by an authorized agent of Lessee showing the average number of Subscribers served and the AGR calculations during said month. The Subscriber Fees to be paid by Lessee hereunder shall accompany each required certificate.

(c) Right to Audit. Once each year during any term of this Agreement and upon fifteen (15) working days advance written notice to Lessee, Lessor shall have the right to inspect or audit all records and accounts related to the determination of fees, as defined in paragraph 4(a) above. Such inspection or audit may be conducted by Lessor or any other qualified persons designated by Lessor. Lessor agrees to maintain the confidentiality of all information so obtained unless to maintain confidentiality would seriously jeopardize a cause of action either being brought by or being defended by Lessor, in which case Lessor shall be permitted to disclose, to the minimum extent reasonably necessary, the information necessary to support or defend the cause of action.

5. INTEGRATION OF LESSOR'S PROGRAMMING AND PROMOTION

(a) If Lessee is providing traditional video programming services over the Channels, Lessee will incorporate Lessor's video programming into Lessee's video programming service offering; provided however, Lessee shall not be required to incur any costs to provide such programming.

(b) If Lessor is providing services that are not similar to or competitive with Lessee's services (except as provided in Paragraph 25 herein), then Lessor may request certain cross-promotion efforts by Lessee provided that such efforts are cost neutral to Lessee and do not, in the reasonable judgment of Lessee, interfere with Lessee's marketing design. For instance, Lessee would agree to list Lessor's programming on an electronic program guide in its video system or would agree to provide a link from Lessee's web site to Lessor's web site; provided that such listings or links do not increase Lessee's costs, unless Lessor is willing to reimburse Lessee for such additional expense. Lessee agrees that the link to Lessor's web site will be reasonably visible and appropriate for Lessor's content.

6. LICENSE MODIFICATIONS

(a) Modifications requested by Lessee. Lessee intends to coordinate and secure consent from licensees to file for license modifications, including but not limited to, power, polarization, transmit antenna patterns, digital, two-way (return path) use of the Channels, boosters, beam benders or repeaters, cells, sectorization, channel swaps, applications for additional licenses for secondary transmission sites and other modifications as appropriate. Lessee agrees to provide Lessor with a full copy of the engineering study at least thirty (30) days prior to the date requested for filing and Lessee agrees to reimburse Lessor its reasonable engineering and legal costs to review the application prior to filing. Lessor shall file any modification application for the Channels requested by Lessee as long as such requested modification does not have a material adverse effect on Lessor's operation of the Channels. If Lessor believes that the requested modification will have a material adverse effect on Lessor's ability to continue to deliver its services to its receive sites, then, within thirty (30) days of receipt of the engineering study, Lessor shall notify Lessee in writing of these concerns in sufficient detail for Lessee to reasonably determine the basis thereof. If Lessee cannot reasonably address such concerns and establish that the modification or application will not have a material adverse effect on Lessor's ability to

continue to deliver its services to its receive sites, then Lessor will not be obligated to approve the modification or application. If Lessee establishes, to Lessor's reasonable satisfaction, that the modification or application will not have a material adverse effect on Lessor's ability to continue to deliver its services to its receive sites, then Lessor shall be obligated to approve the modification or application and such approval shall not be unreasonably withheld, delayed or conditioned. If a modification application is approved by Lessor, Lessor shall file the modification application with the FCC on the date requested by Lessee. A copy of the modification application, bearing the FCC's date stamp, shall be mailed to Lessee by Lessor within fourteen (14) days of the filing of the modification application, at Lessee's address stated herein. Lessee shall be solely responsible for all engineering and legal costs associated with the preparation, review and filing of the modification application. In the event that any license modification requested by Lessee requires receive site upgrades in order for Lessor's receive sites to continue to receive Lessor's services, then Lessee agrees to pay for all costs to complete such upgrade prior to implementing the license modification. If Lessor and Lessee cannot agree that the modification will not have an adverse effect on Lessor's ability to continue to deliver its services to its receive sites, and time is of the essence, Lessor agrees to file the modification application and Lessor shall submit the dispute to the American Arbitration Association in accordance with Paragraph 19. Lessee acknowledges that it will not be allowed to implement such modifications unless the dispute is resolved in its favor by the arbitrators.

(b) Modifications proposed by Lessor. In the event that Lessor desires to file a modification or new application relating to the Channels, prior to filing any such modification or application at the FCC, Lessor agrees to provide Lessee with a full copy of the engineering study. Modification applications requested by Lessor may include, but are not limited to, the following: channel swapping, channel loading, channel shifting, power amendments, transmit antenna changes, beam benders, boosters or repeaters, and other transmission sites, cell sites and two-way (return path) use of the Channels, including applications for additional licenses for secondary transmission sites. If Lessee believes that the requested modification application will have an adverse effect on Lessee's ability to deliver its services to its subscribers, then, within thirty (30) days of receipt of Lessor's engineering study, Lessee shall demonstrate in reasonable detail the material adverse effect that Lessor's modification will have on Lessee's technical ability to provide its services to its subscribers. If Lessee has reasonably demonstrated that the proposed modification or application will have a material adverse effect on Lessee's technical ability to provide its services to its subscribers, and Lessor cannot reasonably address such concerns, then Lessor agrees not to file such modification application with the FCC. If a modification application is filed with the FCC, a copy of the modification application, bearing the FCC's date stamp, shall be mailed to Lessee by Lessor within fourteen (14) days of the filing of the modification application, at Lessee's address stated herein. Lessor shall be responsible for all engineering and legal costs associated with its preparation and filing of such modification application. If Lessor and Lessee cannot agree that the modification will not have an adverse effect on Lessee's Excess Capacity use of the Channels or on Lessee's System, and time is of the essence, Lessor agrees to file the modification application and Lessee shall submit the dispute to the American Arbitration Association in accordance with paragraph 19. Lessor acknowledges that it will not be allowed to implement such modifications unless the dispute is resolved in its favor by the arbitrators.

(c) Equipment for Modifications. As soon as reasonably possible, but in no event longer than 90 days from the Execution Date, Lessee shall purchase and, upon FCC digital approval, install the digital transmitter or digital transmitter upgrade for Lessor's Channel. Any and all equipment required to implement modifications to the Channels requested by Lessee will be purchased and installed by Lessee at Lessee's sole cost and expense. All equipment required to implement modifications to the Channels requested by Lessor will be purchased and installed by Lessor at Lessor's sole cost and expense.

(d) Response Channels. Lessor intends to use its response channels for return path use. If Lessor is unable to license its response channels for return path use, Lessor may request Lessee to exchange an equivalent amount of return path spectrum available to Lessee for Lessor's response channels. Lessee will not be required to agree to such exchange if Lessor's response channels cannot be integrated into Lessee's System, for the same use, at the same cost and with the same efficiency as Lessee's other ITFS and MDS channels in its system.

(e) Contiguous Channels. Anytime after the first anniversary of this Agreement and upon the request of Lessor, Lessee shall use reasonable efforts to facilitate a channel swap for Lessor which would place three (3) of Lessor's Channels in a contiguous format. For instance, if Lessor were licensed on the C Group, then Lessor might exchange its C4 channel for the D1 channel; thereby creating three (3) contiguous channels on C1, D1, and C2 which would all be licensed to Lessor.

(f) Two-Way Applications. Lessee intends to file applications for two-way use of the Channels in the FCC's two-way window expected to open in 1999. Although Lessee intends to file such applications, it may elect not to construct the Channels in that manner and may desire to utilize the Channels as currently licensed. Prior to construction of the Channels for two-way (return path), Lessee would be required to arrange for an exchange of one (1) of Lessor's Channels for another channel in the market which is suitable for use for downstream services. Within thirty (30) days after initiating two-way transmission, Lessee shall provide Lessor with written notice that such two-way transmission has been initiated. After the initiation of two-way transmission by Lessee, Lessor shall have the one time right to require Lessee to test one (1) of its receive sites for interference. Lessee shall pay the reasonable costs for such test procedure.

(g) Boosters and Cells. During any term of this Agreement, Lessee agrees to use its best efforts to engineer and license the Channel reserved for Lessor's use in a similar manner as the rest of Lessee's other wireless channels, including the licensing of cells and boosters. "Best Efforts" shall not require Lessee to make any payments or give up any of its rights in order to resolve interference or other issues that may restrict the ability to utilize cells or boosters for Lessor's Channel. Lessor agrees to pay for the cost to construct and use Lessor's Channel as part of the cells and boosters, if the licensing of such is not required as part of Lessee's System design, provided, that (i) such construction will be made with equipment and upon specifications consistent with the other cells and boosters related to Lessee's Channels and (ii) Lessor's Channel is not being used for commercial purposes, except as provided for in paragraph 25, below. Furthermore, Lessee agrees that any licenses for boosters or cells using Lessor's Channels will be in Lessor's name.

(h) Notification Zones. Lessor agrees to waive the requirement that Lessee notify Lessor of all response station installations. In the event that Lessor experiences material interference at a receive site, Lessee agrees to fully cooperate as follows: Lessee shall provide Lessor a list of all response stations installed within 1,960 feet of Lessor's receive sites. Lessee would immediately assign a technical representative to assist in identifying the source of the interference. If the technical representative reasonably determines that Lessee's response stations are the source of the interference, Lessee will promptly cure the interference and Lessor shall have the right to require Lessee to notify Lessor in accordance with and as then required by the FCC rules for the installation of response stations.

(i) Channel Swapping. If Lessee requests, and Lessor reasonably determines that the request does not have a material adverse affect on Lessor's ability to deliver its service to its receive sites, then Lessor agrees to file the necessary applications with the FCC to exchange certain channels in Lessee's System with Lessor's Channels, pursuant to the FCC's rules. In the event that Lessor believes that such request will have a material adverse affect, then the parties will work to resolve the concern in accordance with the procedures provided in paragraph 6(a)

herein. Channel Swapping is the ability of an ITFS licensee to trade some or all of its licensed spectrum for an equal amount of spectrum licensed to ITFS or MDS licensees within Lessee's System, including MDS licenses for MDS1, 2 and 2A channels. If Channel Swapping is implemented, Lessor shall comply with the FCC rules that apply to Lessor's new channels as a result of the Channel Swapping.

(j) Implementation of Modifications. Lessee may elect not to implement modifications to the channels granted by the FCC that Lessee has requested and to operate the Channels as previously authorized. Lessor may elect not to implement modifications to the Channels granted by the FCC that Lessor requested and to operate the Channels as previously authorized.

7. TRANSMISSION AND RECEIVE SITE EQUIPMENT

(a) Standard Receive Site Installation. As used herein, the phrase "Standard Installation" shall mean a receive site installation (including any future receive sites) consisting of the placement of an ITFS/MMDS receiving antenna in a manner that meets or exceeds the protection requirements of Lessor's respective receive sites at an elevation not to exceed thirty (30) feet above the base mounting location, which could normally receive the line-of-site transmission from the Transmission Site, the coupling thereto of one (1) block down-converter, a sufficient amount of coaxial cable, not to exceed two hundred (200) feet, to connect the antenna to the input of a computer or television, one (1) decoder/converter (one (1) digital set-top receiver as specified by Lessor which does not exceed the cost of the digital set-tops being installed by Lessee in any of its markets), or to the receive site's internal distribution system or LAN, whichever is appropriate. In the event that the digital set-top converter specified by Lessor does exceed the cost of the digital set-tops being installed by Lessee, then Lessor agrees to refund Lessee the difference in cost. Furthermore, Lessee agrees to install a transceiver, instead of a downconverter, if (i) Lessee is providing two-way services in the Metropolitan Area and (ii) Lessee is installing transceivers as part of standard installations for its two-way customers.

(b) Lessor Receive Site Installation. Lessee shall construct, at Lessee's expense, Standard Installations at 30 receive sites less the receive sites that have already been installed and are listed on Exhibit A attached hereto. Lessee shall make additional Standard Installations at other of Lessor's receive sites selected by Lessor, at Lessor's expense. Lessor's cost for any Standard Installations in addition to those listed on Exhibit A shall not exceed Lessee's actual cost in time and material in constructing these additional receive sites. In the event that the Lessor requests construction of a Standard Installation at a receive site location that requires the wiring of a master antenna system or similar multi-receiver configuration, Lessee shall install the extra wiring required and Lessor shall reimburse Lessee for its actual costs in so doing. The equipment used in the construction of the receive sites shall become part of the Leased Equipment as described in Paragraph 8 herein. Lessor shall use its best efforts to ensure reasonable precautions are taken regarding the care and security of each set-top converter placed in Lessor's receive sites. All equipment installed at Lessor's expense shall become Lessor's property.

(c) Alterations/Attachments or Replacement of Equipment. At its expense, Lessee may replace or make alterations of or attachments to the transmission equipment and Leased Equipment as may be reasonably required from time to time by the nature of its business. However, such alterations or attachments must not interfere with Lessor's signal or ongoing operations or violate any FCC rules. Furthermore, any necessary FCC authorization shall be obtained at Lessee's expense prior to the making of any such alteration or attachment. To the extent that any FCC authorization pertaining to the transmission equipment or Leased Equipment is required, Lessor agrees to use its best efforts to obtain such authorization, at Lessee's expense. Lessor agrees to assist Lessee with any license modification applications reasonably requested by Lessee including the filing and prosecution of such applications.

(d) Accommodations for Lessor's Equipment. At its cost, Lessee has provided Lessor with suitable space for the transmission equipment that is part of the Leased Equipment for Lessor's Channel(s) at the Transmission Site. Lessee shall pay for the costs to engineer, prepare an FCC application, operate, maintain and house the equipment at the Transmission Site for one (1) STL purchased, and installed by Lessor and used to connect to Lessee's headend facilities at the Transmission Site. Lessee shall pay for the costs to operate and maintain one (1) TVRO (satellite dish) purchased, licensed and installed by Lessor. In addition, Lessee shall provide Lessor with the use of and access to one (1) additional standard sized rack at the Transmission Site. Any such equipment additions or modifications shall not adversely effect Lessee's System or Lessee's integration of the Channels into Lessee's System. The above space requirements are contingent upon suitable space being available at Lessee's Transmission Site at no additional cost to Lessee. Lessor shall give Lessee thirty (30) days advance written notice of its intent to install any additional equipment and shall coordinate the installation of any additional equipment with Lessee.

(e) Access to Premises and Lessor's Receive Sites. Because Lessee shall be required to perform work at the relay and/or receive sites which house Lessor's ITFS signal reception and/or distribution equipment, Lessor shall secure for Lessee the right to access the facilities as Lessee may require.

8. CHANNEL EQUIPMENT LEASE AND TRANSMISSION SITE LEASE

Lessor shall lease from Lessee all equipment necessary for Lessor to maintain its license that is not shared by other licensees/users in the system, including but not limited to one (1) digital transmitter for Lessor's use and combiner connected to the transmit antenna of Lessee's System (the "Leased Equipment") for the Initial Term and any Renewal Terms of this Agreement provided this Agreement has not been terminated pursuant to paragraph 10. The Leased Equipment is listed in Exhibit B, attached hereto. Such Exhibit B will be updated from time to time to reflect replacements, attachments and alterations.

(a) Equipment Rent. Lessor shall pay to Lessee the total amount of One Dollar (\$1.00) per year for the lease of the Leased Equipment, it being understood that Lessor's provision of the airtime at the rates provided in this Agreement is full consideration for Lessee's lease of the Leased Equipment to Lessor.

(b) Payment of Taxes. Lessee shall be required to pay all taxes and other charges assessed against the Leased Equipment without cost to or reimbursement by Lessor, and Lessee shall be entitled to claim depreciation and investment tax credits thereunder for income tax purposes.

(c) Operation of Leased Equipment. Lessee shall supply, at its sole cost and expense, personnel to operate the Leased Equipment. Such personnel shall, at all times, be under the supervision of Lessee. Said personnel shall insure that the Leased Equipment shall, at all times, meet the technical operating requirements of the rules and regulations of the FCC. Such activities shall be undertaken at such times as are consistent with the operating requirements of Lessee's and Lessor's business. In the event that maintenance which interrupts service is required, Lessee shall provide Lessor sufficient advance notice to allow for scheduling of such service interruption consistent with Lessor's operational requirements. Lessor will provide Lessee with the name and local telephone number of a local technical representative authorized to coordinate system maintenance with Lessee on Lessor's behalf. Notwithstanding the above, Lessee shall, whenever possible, schedule non-emergency maintenance in an effort to minimize interruption of Lessor's use of Lessor's Channel, for example, between 12:00 a.m. and 6:00 a.m. In the event of an emergency disruption that significantly interrupts service on Lessor's System, Lessee shall within a reasonable period of time make reasonable efforts to notify Lessor's local technical

representative of the nature of the emergency. Lessor shall have reasonable access to Transmission Facilities during normal business hours and at other reasonably required times upon twenty-four (24) hours prior notice. Lessee shall pay all costs associated with maintaining and operating the Leased Equipment. Lessee's obligation to provide maintenance on the Leased Equipment at the first thirty (30) of Lessor's receive sites built by Lessee, shall extend only to maintaining the equipment installed by Lessee in its Standard Installation. Any other maintenance performed at any of Lessor's receive sites performed by Lessee at Lessor's request shall be paid for by Lessor, but at Lessee's actual costs.

(d) Leased Equipment Term. The term of this equipment lease shall commence upon the Execution Date and shall end upon the termination of this Agreement.

(e) Purchase of Leased Equipment. Lessor shall be responsible for loss or damage to the Leased Equipment caused by any intentional or negligent act of Lessor, its agents, affiliates or representatives. Lessor shall have the right to purchase the Leased Equipment at the expiration of this Agreement for the book value (depreciated cost of assets as of the date of the expiration of the Agreement).

(f) Lessor's Security Interest in Leased Equipment. Lessee agrees to sign such UCC forms and other documents as are reasonably requested by Lessor to establish a security interest in the Leased Equipment and the equipment for the receive sites required to be installed at Lessee's expense pursuant to paragraph 7(b) in favor of Lessor. An initial UCC form covering the Leased Equipment and the receive site equipment already installed as of the date of this Agreement shall be prepared, signed and delivered by Lessee to Lessor within thirty (30) days of the date of this Agreement. Additional or amended UCC's shall be prepared, signed and delivered by Lessee to Lessor within sixty (60) days from the date that additional Leased Equipment or receive site equipment is installed

(g) Lease/Purchase of Shared Equipment by Lessor. Lessee agrees to lease to Lessor the use of capacity on the Shared Equipment with other licensees/users at the expiration of this Agreement. The "Shared Equipment" shall include such equipment as group combiners, waveguides and transmit antenna. Lessee would maintain ownership and control of the Shared Equipment. The lease of capacity on the Shared Equipment will be without representations or warranties as to the functioning of the equipment. The cost to Lessor for the lease of the Shared Equipment shall be calculated on a pro rata basis to Lessor based on the number of channels licensed to Lessor divided by the number of channels operating on Lessee's System. The costs will include the Transmission Site lease costs, operating costs and the fair market value of the Shared Equipment amortized over its estimated life. However, in the event that Lessee terminates its Transmission Site lease or the Transmission Site lease is terminated, Lessee agrees to sell the Shared Equipment to the consortium of licensees for fair market value. In the event Lessee is unable to form the consortium and Lessee intends to sell the Shared Equipment, then Lessee agrees to sell the Shared Equipment to Lessor. In the event that the Lessor and the consortium of licensees elects not to purchase the Shared Equipment, then Lessee retains the right to dispose of the Shared Equipment in any manner it chooses.

(h) Transmission Site Lease. Lessee agrees to use reasonable efforts to form a consortium of licensees and to negotiate a provision in Lessee's Transmission Site lease to allow the consortium of licensees to assume the Transmission Site lease in the event that Lessee's Transmission Site lease is terminated or Lessee no longer intends to utilize the Transmission Site lease. In the event Lessee is unable to form the consortium and Lessee no longer intends to utilize the Transmission Site lease, then Lessee agrees to use reasonable efforts to arrange for Lessor to assume the Transmission Site lease.

9. CONTROL OVER PROGRAMMING

Except as expressly stated to the contrary herein, Lessee may use its Excess Capacity Airtime on the Channels for any lawful purpose. Lessee shall have the right to transmit voice, video and/or data services over its Excess Capacity Airtime. Except for content or posting by third parties on the Internet or other computer, voice and data networking systems, Lessee agrees that it will not transmit "adult content" video programming provided over Lessor's Channels, including any motion picture, which is rated "R" or "X" by the Motion Picture Association of America or which does not carry an MPAA rating if the motion picture is broadcast unedited and in its original form ("adult content"). Lessee shall not be restricted in providing Internet, data and video streaming services; however, Lessee will use reasonable efforts to filter, screen and/or scramble access by Lessor receive sites of an adult content, as described above. Lessor agrees that so long as Lessee is not in breach of this Agreement, Lessee may peaceably and quietly enjoy Lessee's Excess Capacity Airtime, subject at all times to the terms and conditions of this Agreement.

10. TERMINATION REMEDIES

(a) Termination by Reason of Loss of FCC Operating Authority. If through no material breach by either party, the FCC determines that Lessor or Lessee is not authorized to operate the Channel(s) as contemplated by this Agreement, this Agreement may be terminated by Lessor upon thirty (30) days written notice to Lessee. If such termination occurs pursuant to this paragraph, each party shall be entitled to retain all equipment and materials purchased or furnished by such party.

(b) Termination by Reason of Material Breach by Party. If either party materially breaches its obligations in this Agreement (a "Default"), this Agreement may be terminated by the non-defaulting party if such breach shall continue for a period of thirty (30) days following receipt of written notice from the non-defaulting party. The failure of Lessee to make any payment required under this Agreement shall constitute a material breach. If a Default cannot be cured within thirty (30) days after notice is served, but reasonable efforts have been taken to cure the Default within the thirty (30) days and Lessor or Lessee continues these efforts to conclusion as soon as reasonably possible, the failure to cure within thirty (30) days shall not give rise to a right to termination. In the event of a Default by Lessee that is not cured, Lessor's sole remedy shall be to terminate this Agreement. If Lessee terminates this Agreement due to a Default by Lessor, then any rights that Lessor would have had under this Agreement shall cease.

(c) Right to Specific Performance. The parties acknowledge and agree that the rights reserved to each party are of a special, unique, unusual and extraordinary character, which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated for in damages in an action at law, and the breach by either party of any of the provisions hereof will cause the other party irreparable damage and injury. In such event, the non-breaching party shall be entitled, as a matter of right, without further notice, to require of the breaching party specific performance of all of the acts, services and undertakings required hereunder, including the obtaining of all requisite authorizations to execute or perform this Agreement and to obtain injunctive and other equitable relief in any court of competent jurisdiction to prevent the violation or threatened violation of any of the provisions hereof. Neither this provision nor any exercise by any party of rights to equitable relief or a specific performance herein granted shall constitute a waiver of any other rights which the non-breaching party may have to damages or otherwise.

11. AGREEMENT TO DEFEND

Lessee agrees to defend any suit or proceeding brought against Lessor based on a claim that any device made by Lessee designed and furnished hereunder constitutes an infringement of any existing United States patent, provided Lessee is notified promptly in writing and is given complete authority and information required for the defense of same. Lessee shall pay all

reasonable damages and costs awarded therein against Lessor, but shall not be responsible for any cost or expense incurred or settlement made by Lessor without Lessee's prior written consent. In the event any device furnished hereunder is, in Lessee's or Lessor's opinion, likely to or does become the subject of a claim for patent infringement, Lessee will remove such device and shall substitute therefore other non-infringing, FCC approved equipment.

12. INTERFERENCE

Lessor agrees to immediately execute interference letters or agreements, upon request by Lessee, as long as such letters or agreements will not have a material adverse effect on Lessor's ability to provide its services to its registered receive sites. Lessee shall operate the Leased Equipment and Lessor shall operate its equipment so that such operation does not create or increase harmful interference with electronic transmission of any other FCC licensees entitled to protection under FCC rules and regulations and in accordance with written interference agreements among the parties. If Lessee's or Lessor's operation of the Leased Equipment does create or increase objectionable or harmful interference not provided for by FCC rules or by written agreement between the parties, then Lessee shall take one of the following actions: (i) cease operations causing the interference, (ii) retain the services of engineers and attorneys necessary to resolve the interference problem or (iii) seek the consent of the licensee experiencing the objectionable or harmful interference. Lessee shall pay all engineering and legal fees necessary to resolve any interference caused by Lessor's operation of the Channels. Lessor shall pay all engineering and legal fees necessary to resolve any harmful interference as described above and caused by Lessee's operation of the Channels.

13. LESSEE'S OPTION TO PURCHASE

If, during the term of this Agreement or any renewal or extension thereon, the FCC modifies its rules so as to enable Lessee to be licensed to operate the Channels and Lessor desires to transfer or assign its Channels to another party in whole or in part (except for a transfer or assignment permitted by paragraph 14 herein), Lessee shall then have a right of first refusal to become the assignee or transferee of such interest in the license. Such right of first refusal shall be subject to the same procedures and terms as set forth in paragraph 1(d).

14. TRANSFER OF RIGHTS AND OBLIGATIONS.

Lessee shall have the right to assign, pledge, hypothecate or encumber its rights under this Agreement as collateral for any financing arrangements it makes. Lessee shall also have the right to pledge or hypothecate the Leased Equipment as collateral security for any loans it makes; provided, however, that any pledge of the Leased Equipment shall be made subject to the provisions of this Agreement. Lessor agrees to subordinate its rights in this Agreement to the priority rights of any lender of Lessee and Lessor agrees to sign and execute any documentation reasonably required by Lessee's lender. Lessee, during the course of its construction and operation of Lessee's System, shall have the right to subcontract its construction, engineering, installation and other technical obligations under this Agreement to any partnership, joint venture, corporation or entity which Lessee may choose, provided that Lessee gives Lessor notice of any proposed such action and, provided that no such action contemplated herein shall release Lessee or its subcontractor from fulfilling all of its obligations under this Agreement. Either party shall have the right to assign this Agreement to any affiliate, successor corporation or wholly-owned subsidiary, provided that Lessor or Lessee, as the case may be, agrees to remain liable for its obligations under this Agreement. Lessee shall have the right to sublease any or all of the Channels without the prior written consent of Lessor provided that Lessee shall remain responsible for performance of the terms and conditions of this Agreement. Either party may assign this Agreement to another party by providing a written notice to the other party of its intent to assign its rights and obligations, provided that the proposed assignee agrees in writing to be

bound by and assume as Lessee or Lessor all rights and obligations under the Agreement. Such notification shall (i) identify the proposed assignee, unless the assigning party is restricted from disclosing such information as a result of confidentiality or SEC requirements, in which case the assignor shall disclose the proposed assignee at the earliest permissible date, (ii) specify the date or approximate date upon which the assignment shall be completed, and (iii) confirm to the non-assigning party that the assignor is not in Default of any of its material obligations under this Agreement. The non-assigning party will have thirty (30) days to verify and confirm that the assigning party is not in default of a material obligation under the Agreement. If the non-assigning party has not provided written notice to the assignor identifying a Default of a material obligation under the Agreement within thirty (30) days of receipt of the notice of assignment, then the non-assigning party shall be deemed to have consented to the proposed assignment. If the non-assigning party has identified an existing Default by assignor of a material obligation under Agreement, then the assignor may not assign the lease until the Default has been cured. If the parties disagree as to whether a Default exists, then such dispute shall be resolved pursuant to arbitration in paragraph 19.

15. FORCE MAJEURE

If by reason of force majeure either party is unable in whole or in part to perform its obligations hereunder, the party shall not be deemed in breach of this Agreement during the period of such force majeure. As used herein, the phrase "force majeure" shall mean the following: acts of God, acts of public enemies, orders of any branch of the government of the United States of America, any state or any political subdivisions thereof which are not the result of a breach of this Agreement, order of any military authority, insurrections, riots, epidemics, fires, civil disturbances, material national telecommunications failure, explosions, or any other cause or event not reasonably within the control of the adversely affected party.

16. NON-DISCLOSURE

Lessor acknowledges that there may be made available to it pursuant to this Agreement proprietary information of Lessee relating to the encoding and/or decoding system associated with the ITFS Channel equipment and its patented processes, including, but not limited to, improvements, innovations, adaptations, inventions, results of experimentation, processes and methods, whether or not deemed patentable, and certain business and marketing techniques (all herein referred to as "Confidential Information"). Furthermore, the terms and conditions of this Agreement will also be Confidential Information, as defined herein. Lessor acknowledges that this Confidential Information has been developed by Lessee at considerable effort and expense and represents special, unique and valuable proprietary assets of Lessee, the value of which may be destroyed by unauthorized dissemination. Accordingly, Lessor covenants and agrees that, except as may be required for the performance of this Agreement, neither it nor any of its agents or affiliates shall disclose such Confidential Information to any third person, firm, corporation or other entity for any reason whatsoever, said undertaking to be enforceable by injunctive or other equitable relief to prevent any violation or threatened violation thereof.

Lessee acknowledges that there may be made available to it pursuant to this Agreement proprietary information of Lessor relating to the encoding and/or decoding system associated with the ITFS Channel equipment and its patented processes, including, but not limited to, improvements, innovations, adaptations, inventions, results of experimentation, processes and methods, whether or not deemed patentable, and certain business and marketing techniques (all herein referred to as "Confidential Information"). Furthermore, the terms and conditions of this Agreement will also be Confidential Information, as defined herein. Lessee acknowledges that this Confidential Information has been developed by Lessor at considerable effort and expense and represents special, unique and valuable proprietary assets of Lessor, the value of which may be destroyed by unauthorized dissemination. Accordingly, Lessee covenants and agrees that,

except as may be required for the performance of this Agreement, neither it nor any of its agents or affiliates shall disclose such Confidential Information to any third person, firm, corporation or other entity for any reason whatsoever, said undertaking to be enforceable by injunctive or other equitable relief to prevent any violation or threatened violation thereof.

17. NOTICE

(a) Any notice to be given by Lessor to Lessee under any provision of this Agreement shall be in writing and delivered by hand delivery or by certified mail to Lessee at:

Attention: Chief Executive Officer
People's Choice TV Corp.
Two Corporate Drive, Suite 249
Shelton, Connecticut 06484

With a copy to:

General Counsel
People's Choice TV of Houston, Inc.
Two Corporate Drive, Suite 249
Shelton, Connecticut 06484

With a copy to:

Todd Rowley
People's Choice TV Corp.
5301 E. Broadway
Tucson, Arizona 85711

Any notice to be given by Lessee to Lessor under any provision of this Agreement shall be in writing and delivered by hand delivery or by certified mail to:

Hispanic Information and Telecommunications Network, Inc.
449 Broadway, Third Floor
New York, New York 10013
Attention: Mr. Jose Luis Rodriguez, President

With a copy to:

Hispanic Information and Telecommunications Network, Inc.
449 Broadway, Third Floor
New York, New York 10013
Attention: General Counsel

Benjamin Perez, Esq.
Abacus Communications Company
1801 Columbia Road, N.W., Suite 101
Washington, DC 20009-2031

or at such other location designated by Lessor in writing.

(b) Lessor shall provide to Lessee a copy of any notice received from the FCC concerning the license for the Channels within seven (7) days after receiving such notice.

18. SEVERABILITY

Should any court or agency determine that any provision of this Agreement is invalid, the remainder of the Agreement shall stay in effect and the parties agree to use their best efforts to negotiate a replacement article which is valid.

19. INTERPRETATION, VENUE AND DISPUTE RESOLUTION

(a) Venue. Venue for any cause of action by or between Lessor and Lessee shall be the county and state in which the Channels covered by this Agreement are authorized. This Agreement shall be construed under the laws of that state.

(b) Dispute Resolution. The Parties shall seek to resolve any disputes arising out of or relating to the negotiation, execution, interpretation, performance or nonperformance of this Agreement through amicable settlement by sending to the other Party a notice of dispute. Except as specifically provided in Paragraph 1(e), if the Parties fail to resolve the dispute by amicable settlement within five (5) business days from the date of the notice of dispute, either Party may then request the final settlement of such dispute through arbitration in the city and state in which the Channels are authorized, under the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association (the "AAA") through notifying the AAA in accordance with the Rules. Except as specifically provided in Section 1(e), the arbitration shall be conducted by three (3) arbitrators appointed in accordance with the Rules and shall be conducted pursuant to expedited and accelerated procedures. The arbitrators shall decide the issues submitted to them in accordance with the provisions and commercial purposes of this Agreement. All substantive questions of law shall be determined in accordance with the laws of the State in which the Channels are authorized, the Communications Act of 1934, as amended, and the rules and regulations of the FCC.

(c) Award of Arbitrators is Final. The Parties agree that the award of the arbitrators shall be final and waive any right to trial by jury or to challenge the arbitrators' award. Notwithstanding the above, each Party shall have the right to seek immediate injunctive relief before any court of competent jurisdiction and agree that such relief shall not be sought to avoid or stay the arbitration. Judgment on the award of the arbitrators may be entered in any court having jurisdiction over the Party against which enforcement of the award is being sought, and the Parties hereby irrevocably consent to the jurisdiction of any such court for the purpose of enforcing any such award. In their final award, the arbitrators shall require that the losing Party to the arbitration shall pay all reasonable costs (including without limitation reasonable fees of counsel) incurred in conducting the arbitration.

(d) Cooperation. The Parties shall facilitate the arbitration by making available to one another and to the arbitrators for examination, inspection and extraction of all documents, books, records and personnel under their control if determined by the arbitrators to be relevant to the dispute. The parties shall not be required to disclose privileged information. The arbitrator shall agree to hold all Confidential Information so disclosed in confidence. The parties shall strictly observe the time periods established by the Rules or by the arbitrators for submission of evidence or briefs. The Parties acknowledge and agree that time is of the essence in resolving any dispute submitted to arbitration.

20. ENTIRE AGREEMENT

Except for the Master Agreement between the parties, dated May 14, 1999, this Agreement constitutes the entire agreement between the parties and supercedes all prior oral or written provisions of any kind. The parties further agree that this Agreement may only be modified by written agreement signed by both parties.

21. INDEMNIFICATION

(a) Lessor's Indemnification. To the extent permitted by law, Lessor shall hold Lessee harmless and shall defend Lessee from all direct, indirect and/or third party claims, demands, causes of action, loss, investigation, proceedings, damages, penalties, fines, expenses, and judgments, including attorneys' fees (herein collectively "claims") arising from Lessor's business dealings and performance or non-performance of this Agreement, unless such claim arises from a breach of this Agreement by Lessee.

(b) Lessee's Indemnification to Lessor. To the same extent that Lessor is permitted by state and federal law to indemnify Lessee, Lessee shall forever protect, save and keep Lessor and its permitted successors and assigns harmless from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever, including reasonable attorneys' fees, which arise directly or indirectly out of (i) the negligence or willful misconduct of Lessee, its agents or employees, in connection with the performance of this Agreement, (ii) any programming transmitted by Lessee pursuant to this Agreement including, but not limited to a claim of copyright infringement, (iii) any and all dealings by Lessee or any of its authorized agents or subcontractors with the public, third parties directly associated with Lessee in the performance of this Agreement and subscribers to the Lessee's programming service, or (iv) any maintenance, installation or other work performed by Lessee or its agent or subcontractor at Lessor's receive sites.

(c) Notification of Claims. Each party shall notify the other of any such claim promptly upon receipt of same. Either party (hereinafter referred to, as appropriate, as the "Indemnatee" or "Indemnitor") shall have the option to defend, at its own expense, any claims arising under this Paragraph. If Indemnitor assumes the defense of any such claim, Indemnatee shall delegate complete and sole authority to the Indemnitor to defend or settle same and Indemnitor shall cooperate with Indemnitor in the defense thereof.

22. RELATIONSHIP OF PARTIES.

By the provisions of this Agreement, the parties have entered into an Airtime Lease relationship and not a joint venture and both parties will carry out this Agreement to preserve that intent. Neither party shall present itself as the other party, nor as having any relationship with one another, except as Lessor and Lessee under the terms of this Agreement.

23. EXECUTORY AGREEMENT

Both parties acknowledge this Agreement is executory in nature requiring the continuing performance of obligations by each party to the other.

24. COUNTERPARTS

This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and shall be effective when each of the parties hereto shall have delivered to it this Agreement duly executed by each of the other parties hereto.

25. NON-COMPETITION AGREEMENT

Lessor shall not compete with Lessee in the Metropolitan Area by providing services competitive with Lessee over its Channels, except as provided below. Lessor may seek to offer, for example, high speed Internet and data services over Lessor's Channel. Lessor shall provide

the service over its Channel only to educational institutions as limited below. In addition, for such time that the non-competition provision is in effect, Lessor shall not lease, sublease, assign or transfer any of its rights to its Channel to any third party or enter into any partnership, joint venture, joint-marketing agreement, or similar arrangement by which Lessor shares any of the economic benefits of its Channel with a third party. "Services competitive with Lessee" shall be defined to exclude (i) educational video programming (i.e., programming developed or sponsored by educational institutions or not-for-profit organizations or the U.S. Hispanic Chamber of Commerce), and (ii) internet access services or other data provided to educational institutions which shall be limited to schools, universities, (including up to 20 home-bound students enrolled in schools or universities receiving HITN's services), pre-schools, libraries, senior citizen homes, day care centers, and Hispanic non-profit, non-commercial social service organizations (and up to 50 member sites of the U.S. Hispanic Chamber of Commerce).

In the event that Lessor can demonstrate a significantly superior economic use of its reserved airtime during the Initial Term or any Renewal Term of the Agreement, then Lessee must either pay compensation to Lessor or release Lessor from the non-competition provision relating to Lessor's Channel. Lessor may select the markets to compare to establish the superior economic use. If Lessor establishes a superior economic use, Lessor shall be released from the non-competition provision with respect to the market which was the basis for the comparison (unless Lessee elects to make the cash compensation payment). In order to demonstrate a significantly superior economic use of its reserved airtime, Lessor will be required to establish the following:

(a) Lessor has executed a bona fide, arms-length written lease agreement for one (1) six (6) Mhz Channel or less with an unaffiliated wireless operator in a market other than markets in which Lessee leases capacity from Lessor. The wireless operator cannot be an entity which owns, lease or controls more than eight (8) wireless channels in the market.

(b) The airtime lease shall provide that Lessor receives annual contract consideration equal to a minimum of five (5) times the annual contract consideration per home paid by Lessee in the market which is the basis for the comparison. For purposes of the comparison, the consideration per home will be derived by dividing the total annual consideration paid by the respective parties divided by the number of homes in the protected service area. That will provide a price per home. If the price per home is equal to an amount five (5) times or greater, then the parties will act as provided below. In addition, such amounts used to derive the total annual consideration shall be further adjusted if the other wireless operator is not making comparable payments for operating costs, equipment or other fees paid by Lessee to Lessor as provided in Lessee's airtime lease with Lessor or in the Master ITFS Agreement.

(c) The market in which Lessor intends to demonstrate a superior economic use must have a minimum of 300,000 households in the PSA. Since the comparison is made on a price per home basis, the comparison between markets is adjusted to address differences in size of markets.

(d) In order to make such comparison, the Lessor must have received annual contract consideration under the other airtime lease agreement for a period of at least twelve (12) months.

In the event that a significantly superior economic use has been demonstrated by Lessor, then Lessee shall be obligated to pay a one-time Compensation Fee to Lessor or to release Lessor from its non-competition provision with respect to the market that was the basis for the comparison. The Compensation Fee will be equal to the difference between the price per home paid by Lessee and the price per home paid by the other wireless operator times two and one-half

(2.5). The Compensation Fee will be paid in one lump sum within 12 months from the date upon which it has been reasonably demonstrated that the criteria set forth in a) through d) above have been met and in no event will the Compensation Fee exceed \$500,000.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

Date: May 14, 1999

PEOPLE'S CHOICE TV OF HOUSTON, INC.

By:

Its:

Dr. Vice President

Date:

5/14/99

HISPANIC INFORMATION AND
TELECOMMUNICATIONS NETWORK, INC.

By:

Its:

President

Houston, TX

H1

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WHJ946

*Licensed to Sprint
Subsidiary –
Alda Gold, Inc.*

Houston, TX

H2

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WHJ887

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